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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 61, No. 187
Wednesday, September 25, 1996

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV96–922–2 FIR]

Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that establishes assessment rates for Marketing Order Nos. 922, 923 and 924 for the 1996–97 and subsequent fiscal periods. The Washington Apricot Marketing Committee, Washington Cherry Marketing Committee, and Washington-Oregon Fresh Prune Marketing Committee (Committees) are responsible for local administration of the marketing orders which regulate the handling of apricots and cherries grown in designated counties in Washington, and prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess apricot, cherry and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Tershirra Yeager, Marketing Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2522–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698, or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204, telephone (503) 326–2724, FAX (503) 326–7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2491, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable apricots, cherries, and prunes beginning April 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handlers are afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 55 handlers of Washington apricots, 55 handlers of Washington sweet cherries, and 30 handlers of Washington-Oregon fresh prunes subject to regulation under the marketing orders. In addition, there are about 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Washington apricot, Washington cherry, and Washington-Oregon fresh prune producers and handlers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The orders provide authority for the Committees, with the approval of the Department, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees needs

and with the costs for goods and services in their local area and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Washington Apricot Marketing Committee met on May 16, 1996, and unanimously recommended 1996–97 expenditures of $9,385 and an assessment rate of $3.00 per ton of apricots. In comparison, last year's budgeted expenditures were $9,594.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of apricots grown in designated counties in Washington. Apricot shipments for the year are estimated at 2,300 tons which should provide $6,900 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Washington Cherry Marketing Committee met on May 17, 1996, and unanimously recommended 1996–97 expenditures of $56,665 and an assessment rate of $1.00 per ton of cherries. In comparison, last year's budgeted expenditures were $55,393.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of cherries grown in designated counties in Washington. Shipments for the year are estimated at 30,000 tons which should provide $30,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Washington-Oregon Fresh Prune Committee met on May 29, 1996, and unanimously recommended 1996–97 expenditures of $6,645 and an assessment rate of $1.00 per ton of fresh prunes. In comparison, last year's budgeted expenditures were $10,018.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Fresh prune shipments for the year are estimated at 2,700 tons which should provide $2,700 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Committees voted against having an assessment rate for their respective programs for the 1995–96 fiscal year. Major expenditures recommended by the Committees for the 1996–97 year include salary expenses, and office expenses.

An interim final rule regarding this action was published in the August 7, 1996, issue of the Federal Register (61 FR 40954). That rule provided a 30-day comment period. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Committees' 1996–97 budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on April 1, 1996, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable apricots, cherries and prunes handled during such fiscal period; (3) handlers are aware of the actions which were recommended by the Committees at public meetings and are similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action, providing a 30-day comment period, and no comments were received.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

Accordingly, the interim final rule amending 7 CFR parts 922, 923, and 924 which was published at 61 FR 40954 on August 7, 1996, is adopted as a final rule without change.

Dated: September 19, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24504 Filed 9–24–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 948

[Docket No. FV96–948–2 FIR]

Irish Potatoes Grown in Colorado; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established an assessment rate for the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) under Marketing Order No. 948 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: Effective on September 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918; FAX 202-720–5698, or Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724; FAX 503–326–7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2525–S, Washington DC 20090–6456, telephone 202–720–2491; FAX 202-720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning September 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 285 producers of Colorado Area II potatoes in the production area and approximately 118 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The Colorado potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on May 23, 1996, and unanimously recommended 1996–97 expenditures of $60,999 and an assessment rate of $0.0030 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $62,328. The assessment rate of $0.0030 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $34,624 for salaries for the Executive Director, Administrator, and Assistant Administrator, and $3,000 for utilities. Budgeted expenses for these items in 1995–96 were $36,978 and $3,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado area II potatoes. Potato shipments for the year are estimated at 16,500,000 hundredweight which should provide $49,500 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the July 15, 1996, issue of the Federal Register (61 FR 36813). That interim final rule added § 948.216 to establish an assessment rate for the Committee. That rule provided that interested persons could file comments through August 14, 1996. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at those meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on September 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Note: This section will appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule amending 7 CFR part 948 which was published at 61 FR 36813 on July 15, 1996, is adopted as a final rule without change.

Dated: September 19, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24503 Filed 9–24–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[CGD 94–089]

RIN 2115–AF19

Advance Notice of Arrivals, Departures, and Certain Dangerous Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard has amended the requirements for notice of arrival and departure by applying them to vessels over 300 gross tons and eliciting added information. In addition, the Coast Guard amended the requirement for all foreign vessels, regardless of the gross tonnage, to give notice of arrival and departure anywhere within the Seventh Coast Guard District. These changes are necessary for the Coast Guard to implement more efficiently its programs for safety of vessels and for protection of the marine environment. They should aid in the identification and elimination of substandard ships from U.S. waters, improve emergency response, and facilitate the enforcement of rules governing Certificates of Financial Responsibility.

EFFECTIVE DATE: October 25, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA, 3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: CDR Dennis Haise, Operating and Environmental Standards Division, Vessel and Facility Operating Standards Branch (202) 267–6451.

SUPPLEMENTARY INFORMATION

Regulatory History

On January 17, 1996, the Coast Guard published a notice of proposed rulemaking entitled Advance Notice of Arrivals, Departures, and Certain Dangerous Cargoes in the Federal Register (61 FR 1183). The Coast Guard received 5 letters commenting on the proposal. No public meeting was requested, and none was held.

Background and Purpose

The Ports and Waterways Safety Act of 1972 [86 Stat. 424], as amended by the Port and Tanker Safety Act of 1978 [92 Stat. 1271], authorizes the Secretary of the Department in which the Coast Guard is operating to require the receipt of notice from any vessel destined for or departing from a port or place under the jurisdiction of the United States. This notice may include any information necessary for the control of the vessel and for the safety of the port or marine environment. See 33 U.S.C. 1223; 33 CFR Part 160, Subpart C. In April, 1994, the Coast Guard established its Port-State-Control Program (PSCP) to eliminate substandard ships from U.S. waters. It developed a comprehensive risk-based targeting scheme to set boarding priorities and used funds provided in the Coast Guard's 1994 appropriations act for this purpose. See Senate Report Number 103–150. The primary factors used in determining which vessels to board are the vessel's: flag, owner, operator, classification (''class'') society, age, and operating history. The PSCP's success hinges on the ability of the Coast Guard to identify and examine those vessels that seem to pose the greatest risks to life, property, and the environment. By making vessels provide added information about arrival and departure, field units of the Coast Guard will be able to efficiently target vessels and allocate inspection resources.

Applying this rule to U.S. vessels as well will also help the Captain of the Port (COTP) to effectively direct

inspection resources by applying similar criteria to insure that the highest risk U.S. vessels are also inspected along with foreign vessels posing similar risks.

As the Coast Guard continues enforcing financial responsibility for water pollution under the Oil Pollution Act of 1990, it is important that only those vessels that have satisfactorily demonstrated their ability to meet their responsibility to the U.S. resulting from their discharge of oil or hazardous substances be permitted into U.S. waters.

A Certificate of Financial Responsibility (COFR) is required of certain vessels over 300 gross tons, is issued by the Coast Guard, and documents a vessel's compliance with U.S. law on financial responsibility for water pollution. The current threshold of 1600 gross tons for notice means that the Coast Guard gets no advance notice of arrival for many vessels over 300 gross tons required to carry COFRs. Reducing the tonnage threshold will enhance the ability of the COTP to verify compliance by vessels over 300 gross tons with the requirements for the carriage of COFRs.

In 1989, because of the large number of foreign vessels arriving at the port of Miami without notice, in unsafe condition and without proper manning, the Coast Guard amended 33 CFR Part 160 so that all foreign vessels calling in the zone of the COTP Miami had to give notice of arrival.

The COTP Miami runs a vigorous compliance program aimed at these low-tonnage and often substandard ships. However, vessel operators have been able to avoid the stricter requirements and potential enforcement of the COTP Miami by changing their ports of call to other, nearby COTP zones (such as those of Jacksonville, Savannah, Charleston, or Tampa).

To remove the incentive to avoid scrutiny by the COTP Miami, and to improve the effectiveness of efforts by the Seventh Coast Guard District to eliminate substandard ships from U.S. waters, the requirement for notice of arrival by all commercial non-public foreign vessels needs expansion to cover all COTP zones in the Seventh District. The boundaries of the Seventh District appear at 33 CFR 3.35–1(b); the District comprises South Carolina, Georgia, and most of Florida, along with the island possessions of the U.S. pertaining to Puerto Rico and the Virgin Islands.

Discussion of Comments and Changes

One comment was received concerning the exemption of Oil Spill Recovery Vessels (OSRVs) from the requirements of this rule based on the premise that these vessels are normally in a standby status and only get underway for actual spill response operations or for training. The Coast Guard agrees with this position and has amended the rules to exclude OSRVs from all reporting requirements except § 160.215 (Notice of Hazardous Condition).

One comment suggested that the rule and the Port State Control Program (PSCP) only focuses on foreign flag vessels and therefore U.S. vessels should be exempt. The Coast Guard agrees that most of the emphasis for this increase in reporting is because of PSCP and is directed at foreign flag vessels, however, U.S. vessels are also targeted for boarding based on their history of performance. Part of the focus of this rulemaking is to allow the COTP to use this data to better direct the use of limited resources. The Coast Guard bears the responsibility to insure compliance with U.S. law by both foreign and domestic vessels. There are provisions within the rule that permit vessels operating exclusively within a COTP zone or on a fixed schedule to forgo these requirements once the COTP has been informed of their operations.

One of the comments suggested that the applicability be changed to include those vessels of exactly 300 gross tons and higher. The applicability in this rule mirrors that of the requirements for COFRs and, therefore, has not been changed.

Another comment suggested that the rulemaking address tugs towing barges if the barge is over 300 gross tons with both the tug and barge being identified in the reporting process. Barges are exempt from the notification process by the nature of their trade and because of the size of the U.S. barge fleet. The reporting of all tugs and barges would cause an excessive workload for both the Coast Guard and the industry. However, a tug of over 300 gross tons on a voyage of 24 hours or more will still have to comply with the advance notice of arrival requirements.

One comment suggested that § 160.207(c)(8) be changed to ''last port of call'' vice ''Name of port or place of departure''. The Coast Guard disagrees. This wording is explained in the definitions section (§ 160.203) of the regulations and is clear as written.

One comment addressed changing § 160.207(c)(10) to read ''Estimated date and time of arrival in U.S. waters and date and time of arrival at a specific berth or anchorage''. The Coast Guard disagrees. The requirement as written is clear and provides adequate information to allow for directing resources. More specific information would only cause a greater burden on the industry as specific data would require more frequent changes.

One comment recommended adding the intent to bunker to the notification requirements. The Coast Guard disagrees. Although this has some merit, the COTP can require a 4 hour advance notice of transfer under 33 CFR 156.118(b) for lightering or fueling operations if deemed necessary in a particular port.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This rule, for the most part, would incorporate into an established reporting regime what are becoming customary procedures. The items made matters of notice are readily available to those from whom we seek them. Modern electronic communication simplifies their reporting. Some units of the Coast Guard already receive much of this information from the shipping industry on a voluntary basis.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether this rule, if adopted, would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Small businesses generally operate fewer vessels and would, therefore, have fewer reports to make. As the notice can be spoken and need follow no particular format, costs could be limited to those of a brief telephone call. In the Seventh Coast Guard District, all foreign vessels, regardless of size, have had to give notice since 1989, with no reported economic impact.

In an effort to minimize the impacts of the reporting requirements, current

§ 160.201 already contains several exemptions from the reporting requirements. Notwithstanding the changes this rule would make to § 160.201(c)(1), these exemptions would remain.

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section numbers are §§ 160.207, 160.211, and 160.213, and the corresponding approval number is OMB Control Number 2115–0557.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under paragraph 2.B.2e(22) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 160 as follows:

1. The authority citation for Part 160 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46.

2. In 160.201, paragraphs (b), (c) introductory text, (c)(1), and (c)(3)(i) through (c)(3)(iii) are revised, and paragraphs (c)(3)(iv) through (c)(3)(x) are added to read as follows:

§ 160.201 Applicability and exceptions to applicability.

* * * * *

(b) This part does not apply to recreational vessels under 46 U.S.C. 4301 *et seq.* and, except § 160.215, does not apply to:

(1) Passenger and supply vessels when they are employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf, and

(2) Oil Spill Recovery Vessels (OSRVs) when engaged in actual spill response operations or during spill response exercises.

(c) Section 160.207 does not apply to the following:

(1) Each vessel of 300 gross tons or less, except a foreign vessel of 300 gross tons or less entering any port or place in the Seventh Coast Guard District as described by 3.35–1(b) of this chapter.

* * * * *

(3) * * *

(i) Name of the vessel;

(ii) Country of registry of the vessel;

(iii) Call sign of the vessel;

(iv) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel;

(v) Name of the registered owner of the vessel;

(vi) Name of the operator of the vessel;

(vii) Name of the classification society of the vessel;

(viii) Each port or place of destination;

(ix) Estimated dates and times of arrivals at and departures from these ports or places; and

(x) Name and telephone number of a 24-hour point of contact.

* * * * *

3. In § 160.203, new definitions, for ''gross tons'' and ''operator'', are added in alphabetical order, and the definition for ''public vessel'' is revised, to read as follows:

§ 160.203 Definitions.

* * * * *

Gross tons means the tonnage determined by the tonnage authorities of a vessel's flag state in accordance with the national tonnage rules in force before the entry into force of the International Convention on Tonnage Measurement of Ships, 1969 (''Convention''). For a vessel measured only under Annex I of the Convention, gross tons means that tonnage. For a vessel measured under both systems, the higher gross tonnage is the tonnage used for the purposes of the 300-gross-ton threshold.

* * * * *

Operator means any person including, but not limited to, an owner, a demise-(bareboat-) charterer, or another contractor who conducts, or is responsible for, the operation of a vessel.

* * * * *

Public vessel means a vessel that is owned or demise- (bareboat-) chartered by the government of the United States, by a State or local government, or by the government of a foreign country and that is not engaged in commercial service.

* * * * *

4. In § 160.207, paragraphs (c)(1) through (c)(5) are revised, and paragraphs (c) (6) through (11) are added, to read as follows:

§ 160.207 Notice of arrival: Vessels bound for ports or places in the United States.

* * * * *

(c) * * *

(1) Name of the vessel;

(2) Country of registry of the vessel;

(3) Call sign of the vessel;

(4) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel;

(5) Name of the registered owner of the vessel;

(6) Name of the operator of the vessel;

(7) Name of the classification society of the vessel;

(8) Name of the port or place of departure;

(9) Name of the port or place of destination;

(10) Estimated date and time of arrival at this port or place; and

(11) Name and telephone number of a 24-hour point of contact.

5. In § 160.211, paragraph (a) introductory text and paragraphs (a) (1)–(8) are revised and paragraphs (a) (9)–(16) are added to read as follows:

§ 160.211 Notice of arrival: Vessels carrying certain dangerous cargo.

(a) The owner, agent, master, operator, or person in charge of a vessel, except a barge, bound for a port or place in the United States and carrying certain dangerous cargo, shall notify the Captain of the Port of the port or place of destination at least 24 hours before entering that port or place of the:

(1) Name of the vessel;

(2) Country of registry of the vessel;

(3) Call sign of the vessel;

(4) International Maritime Organization (IMO) international number or, if the vessel does not have

an assigned IMO international number, the official number of the vessel;

(5) Name of the registered owner of the vessel;

(6) Name of the operator of the vessel;

(7) Name of the classification society of the vessel;

(8) Name of the port or place of departure;

(9) Name of the port or place of destination;

(10) Estimated date and time of arrival at this port or place;

(11) Name and telephone number of a 24-hour point of contact;

(12) Location of the vessel at the time of the report;

(13) Name of each of the certain dangerous cargoes carried;

(14) Amount of each of the certain dangerous cargoes carried;

(15) Stowage location of each of the certain dangerous cargoes carried; and

(16) Operational condition of the equipment under § 164.35 of this chapter.

* * * * *

6. In § 160.211(b), paragraph (b) is amended by removing the reference ''(a)(8)'' and adding, in its place, the references ''(a)(4) and (a)(8) through (16)''.

7. In § 160.213, paragraph (a) introductory text and paragraphs (a) (1)–(7) are revised and paragraphs (a) (8)–(15) are added to read as follows:

§ 160.213 Notice of departure: Vessels carrying certain dangerous cargo.

(a) The owner, agent, master, operator, or person in charge of a vessel, except a barge, departing from a port or place in the United States for any other port or place and carrying certain dangerous cargo, shall notify the Captain of the Port or place of departure at least 24 hours before departing, unless this notification was made within 2 hours after the vessel's arrival, of the:

(1) Name of the vessel;

(2) Country of registry of the vessel;

(3) Call sign of the vessel;

(4) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel;

(5) Name of the registered owner of the vessel;

(6) Name of the operator of the vessel;

(7) Name of the classification society of the vessel;

(8) Name of the port or place of departure;

(9) Name of the port or place of destination;

(10) Estimated date and time of arrival at this port or place;

(11) Name and telephone number of a 24-hour point of contact;

(12) Name of each of the certain dangerous cargoes carried;

(13) Amount of each of the certain dangerous cargoes carried;

(14) Stowage location of each of the certain dangerous cargoes carried; and

(15) Operational condition of the equipment under § 164.35 of this chapter.

* * * * *

(8) In § 160.213(b), paragraph (b) is amended by removing the reference ''(a)(7)'' and add, in its place, the references ''(a)(4) and (a) (8) through (15)''.

Dated: September 17, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–24422 Filed 9–24–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA43–7116; FRL–5608–7]

Approval and Promulgation of Air Quality Implementation Plans; Washington; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving the Inspection and Maintenance (I/M) State Implementation Plan (SIP), for Washington State. On August 21, 1995, Washington submitted SIP revision requests to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act, (1990) and Federal I/M rule 40 CFR part 51, subpart S. These SIP revisions will require vehicle owners to comply with the Washington I/M program in the two Washington ozone nonattainment areas classified as ''marginal'' and in the three carbon monoxide nonattainment areas classified as ''moderate''. This revision applies to the Washington counties of Clark, King, Pierce, Snohomish, and Spokane.

EFFECTIVE DATE: This rule is effective as of September 25, 1996.

ADDRESSES: Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and the Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504–7600.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Office of Air Quality, (OAQ–107), 1200 6th Avenue, Seattle, WA 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act, as amended in 1990 (CAA or Act), requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) required any ozone nonattainment area which has been classified as ''marginal'' (pursuant to section 181(a) of the Act) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, any ozone nonattainment area classified as moderate or worse must implement a basic or an enhanced I/M program depending upon its classification, regardless of previous requirements.

Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the Act to have an I/M program. Ozone nonattainment areas classified as ''serious'' or worse with populations of 200,000 or more, and CO nonattainment areas with design values above 12.7 ppm and populations of 200,000 or more, and metropolitan statistical areas with populations of 100,000 or more in the northeast ozone transport region, were required to meet EPA guidance for enhanced I/M programs.

The EPA has designated two areas as ozone nonattainment in the State of Washington. The Puget Sound ozone nonattainment area is classified as marginal and contains King, Pierce, and Snohomish counties. The Vancouver Air Quality Maintenance Area is classified as marginal and contains Clark county. Additionally, three areas in Washington state are designated as CO nonattainment areas. Both the Spokane Carbon Monoxide Nonattainment area (Spokane County) and the Puget Sound Carbon Monoxide

Nonattainment area (King, Pierce, and portions of Snohomish Counties) have design values greater than 12.7 ppm and are designated as ''moderate plus''. The Vancouver Air Quality Maintenance Area is a ''moderate'' carbon monoxide nonattainment area, with a design value below 12.7 ppm. The central Puget Sound has an urbanized area population of 1,793,612, and Spokane has an urbanized area population of 266,709. Based on these nonattainment designations and populations, a basic I/M program is required in the Vancouver and Puget Sound ozone nonattainment area, while enhanced I/M programs are required in the Puget Sound and Spokane carbon monoxide nonattainment areas.

By this action, the EPA is approving the submittal of the Washington I/M SIP. The EPA has reviewed the State submittal against the statutory requirements and for consistency with the EPA regulations. A summary of the EPA's analysis is provided below. In addition, a history and a summary to support approval of the State submittal is contained in a TSD, dated May 10, 1996, which is available from the Region 10 Office (address provided above).

II. I/M Regulation General SIP Submittal Requirements

The original I/M regulation was codified at 40 CFR part 51, Subpart S, and required States to submit an I/M SIP revision which includes all necessary legal authority and the items specified in 40 CFR 51.372 (a)(1) through (a)(8) by November 15, 1993. On September 18, 1995, the EPA published a final regulation establishing the ''low enhanced'' I/M requirements, pursuant to section 182 and 187 of the Act (40 CFR part 51). These low enhanced I/M requirements superseded the former enhanced I/M requirements. The State has met the low enhanced I/M requirements established by the September 18, 1995 rulemaking.

III. State Submittal

On August 21, 1995, the State of Washington submitted the I/M SIP for its five carbon monoxide and ozone nonattainment areas. Public hearings for the submittal were held in Vancouver, Bellevue, and Spokane on June 6, 7, and 8, 1995, respectively.

The submittals provide for the continued implementation of I/M programs in the Puget Sound, Spokane, and Vancouver areas. Inspection and Maintenance programs have been running in the Puget Sound area since 1982, in Spokane since 1985, and in Vancouver since 1993. Washington's centralized, test only, biennial program meets the requirements of EPA's low enhanced performance standard and other requirements contained in the Federal I/M rule in the applicable nonattainment counties. Testing will be overseen by the Washington State Department of Ecology and its I/M contractor, Systems Control. Other aspects of the Washington I/M program include: testing of 1968 and later light duty vehicles and trucks and heavy duty trucks, a test fee to ensure the State has adequate resources to implement the program, enforcement by registration denial, a repair effectiveness program, contractual requirements for testing convenience, quality assurance, data collection, reporting, test equipment and test procedure specifications, public information and consumer protection, and inspector training and certification. In addition, the low enhanced I/M programs will include: a two-speed (2500 and idle) test or a loaded idle test, and a program to evaluate on-road testing. An analysis of how the Washington I/M program meets the EPA's I/M regulation was provided in 61 FR 38086, published on July 23, 1996.

The criteria used to review the submitted SIP revision are based on the requirements stated in Section 182 of the CAA and the most recent Federal I/M regulations (September 18, 1995). EPA has reviewed the Washington I/M SIP revision. The Washington regulations and accompanying materials contained in the SIP represent an acceptable approach to the I/M requirements and meet the criteria required for approvability.

IV. Response to Comments

Comment: One commenter, which is an entity of the Federal government, objected to an aspect of the I/M program regarding emission inspections by fleet operators. Operators who chose to utilize the fleet vehicle self-testing program must purchase certificate forms by paying a fee of $12 per vehicle. The state regulation that establishes vehicle testing requirements at WAC § 173–422–160 waives the payment of fees for state and local government fleets. The Federal entity commented that the state requirements are impermissibly discriminatory and an unconstitutional tax of the Federal government by the state. The commenter also wrote that the $12 fee per vehicle certificate is impermissible because the fee exceeds the state's administrative costs.

Response: The EPA does not agree that the state fee structure which requires payment of a fee by Federal fleet operators impermissibly discriminates against the Federal government or that the fee of $12 is impermissibly high. The Ecology regulations at WAC 173–422–160 establish requirements for all fleet operators, including the requirement for fleet operators to submit certificate forms of emission self-testing for each vehicle, at a cost of $12 for each certificate. The regulation specifically waives the payment for fleet forms only for state and local government fleets.

The EPA interprets section 118 of the CAA requirement that Federal agencies comply with air pollution requirements ''in the same manner and to the same extent as any nongovernmental entity'' to mean that Federal entities must comply with any air pollution rule established under the Act to no less an extent than nongovernmental entities. In this case, the state regulation applies to all fleet operators, both governmental and nongovernmental, and waives the fee requirement only for state and local governments. Therefore, the EPA views the state as requiring payment of fees by Federal entities in the same manner as nongovernmental entities. The EPA believes that Congress has consented to the imposition of the state fees on Federal entities in a situation such as this by enacting section 118 of the CAA. In addition, EPA notes that this is consistent with the result in *U.S.* v. *South Coast Air Quality Management District*, 748 F.Supp. 732 (C.D. Calif. 1990), where the Court wrote that a state permit fee requirement applying to both Federal and private entities that exempts local and state government agencies is consistent with section 118 of the CAA.

Under section 118(a) of the CAA, a Federal entity is required to comply with ''any requirement to pay a fee or charge imposed by a State or local agency to defray the costs of its air pollution regulatory program.'' The fee of $12 per vehicle has been established by Ecology under the authority of RCW 70.120.170(4), which requires Ecology to set fees at an amount ''required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriate to the department to cover the administrative costs of the motor vehicle emission inspection program.'' Ecology has written that it established fleet self-testing fees to recoup the costs associated with implementing the emission testing program, including the cost of equipment audits, travel expenses, training and continued education, printing and storing of forms, and the certification of the self-testing fleet inspection personnel. The commenter has not submitted any data to indicate

that the fee of $12 per vehicle is unreasonable and EPA concludes that on its face the fee does not appear to be unreasonable. EPA is approving the fee structure because the State has established the fee consistent with the CAA and state law. Under section 110(k)(3) of the CAA, EPA must approve any SIP revision submitted by a state that meets all of the applicable requirements of the Act.

Comment: One Federal government entity commented that Ecology is improperly requiring annual inspection of its fleet.

Response: Legislation enacted by the State of Washington at RCW 70.120.170(5) requires ''all units of local government and agencies of the state'' to test the emissions of their vehicles annually. In discussions with the Ecology about this comment, Ecology has agreed that Federal entities are not subject to this requirement, and need only meet the requirement to test emissions biennially, as required by RCW 70.120.170(1).

V. Today's Action

The EPA is approving the Washington I/M SIP as meeting the requirements of the CAA and the Federal I/M rule. All required SIP items have been adequately addressed as discussed in this Federal Register action.

Pursuant to Section 553(d)(3) of the Administrative Procedures Act (APA), this final notice is effective upon the date of publication in the Federal Register. Section 553(d)(3) of the APA allows EPA to waive the requirement that a rule be published 30 days before the effective date if EPA determines there is ''good cause'' and publishes the grounds for such a finding with the rule. Under section 553(d)(3), EPA must balance the necessity for immediate federal enforceability of these SIP revisions against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule. *United States* v. *Gavrilovic*, 551 F 2d 1099, 1105 (8th Cir., 1977). The purpose of the requirement for a rule to be published 30 days before the effective date of the rule is to give all affected persons a reasonable time to prepare for the effective date of a new rule.

EPA is making this rule effective upon September 25, 1996 to provide necessary rulemaking for the forthcoming Puget Sound Ozone and Carbon Monoxide Redesignations. The State relies on the existence of an approved I/M program as part of the carbon monoxide maintenance demonstration. The WDOE will discontinue implementation of the oxygenated fuel program in the Seattle-Tacoma-Everett Consolidated Metropolitan Statistical Area (CMSA) once approval of the carbon monoxide maintenance plan becomes effective. As much time as possible needs to be provided for State and local air authorities to notify fuel distributors so that distribution plans can be modified in response to these changes.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. I certify that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by November 25, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: September 6, 1996.

Chuck Clarke,

Regional Administrator.

PART 52—[AMENDED]

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(61) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(61) SIP revisions received from WDOE on August 21, 1995, requiring vehicle owners to comply with its I/M program in the two Washington ozone nonattainment areas classified as ''marginal'' and in the three carbon monoxide nonattainment areas classified as ''moderate''. This revision applies to the Washington counties of Clark, King, Pierce, Snohomish, and Spokane.

(i) Incorporation by reference.

(A) July 26, 1995 letter from Director of WDOE to the Regional Administrator of EPA submitting revisions to WDOE's SIP consisting of the July 1995 *Washington State Implementation Plan for the Motor Vehicle Inspection and Maintenance Program* (including Appendices A through F), adopted August 1, 1995, and a supplement letter and ''Tools and Resources'' table dated May 10, 1996.

[FR Doc. 96–24523 Filed 9–24–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[LA–34–1–7300; FRL–5615–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Correction of Classification; Approval of the Maintenance Plan; Redesignation of Pointe Coupee Parish to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: The EPA published without prior proposal a Federal Register notice approving a request from the State of Louisiana to remove Pointe Coupee Parish, Louisiana, from the Baton Rouge serious ozone nonattainment area, to reclassify the parish from serious to marginal, and to redesignate it to attainment for ozone. The direct final approval was published on July 22, 1996 (61 FR 37833).

The EPA subsequently received adverse comments on the action. Accordingly, the EPA is withdrawing its direct final approval. All public comments received will be addressed in a subsequent final rule.

EFFECTIVE DATE: This withdrawal is effective on September 25, 1996.

ADDRESSES: Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, and Volatile organic compounds.

40 CFR Part 81

Air pollution control, Designation of areas for air quality planning purposes.

Authority: 42 U.S.C. 7401–7671q.

Therefore, the final rule appearing at 61 FR 37833, July 22, 1996, which was to become effective September 20, 1996, is withdrawn.

Dated: September 18, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–24522 Filed 9–20–96; 9:44 am]

BILLING CODE 6560–50–P

40 CFR PART 261

[SW–FRL–5615–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by the Texas Eastman Division of Eastman Chemical Company (Texas Eastman) to exclude from hazardous waste control (or delist), certain solid wastes. The wastes being delisted consists of ash generated from the incineration of waste water treatment sludge at its facility. This action responds to Texas Eastman's petition to delist these wastes on a ''generator specific'' basis from the lists of hazardous wastes. After careful analysis, EPA has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies only to the fluidized bed incinerator (FBI) ash generated at Texas Eastman's Longview, Texas, facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills.

EFFECTIVE DATE: September 25, 1996.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas,

Texas 75202, and is available for viewing in the EPA library on the 12th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is ''F–96–TXDEL-TXEASTMAN.'' The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For technical information concerning this notice, contact Michelle Peace, Delisting Program (6PD-O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7430.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. Petitioners must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of this Rulemaking

Texas Eastman petitioned EPA to exclude from hazardous waste control the ash produced from the incineration of sludge from their waste water treatment plant. The ash is currently disposed in an on-site hazardous waste landfill at Texas Eastman in Longview, Texas. After evaluating the petition, EPA proposed, on June 25, 1996, to exclude Texas Eastman's waste from the lists of hazardous waste under §§ 261.31 and 261.32. See 61 FR 32753. This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Texas Eastman's petition.

II. Disposition of Delisting Petition

Eastman Chemical Company—Texas Eastman Division, Longview, Texas, 75607

A. Proposed Exclusion

Texas Eastman petitioned EPA to exclude from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, an annual volume of ash generated from incineration of sludge from its wastewater treatment plant. Specifically, in its petition, Texas Eastman requested that EPA grant a standard exclusion for 7,000 cubic yards of incinerator ash generated per calendar year. The FBI ash is listed for 56 EPA Hazardous Waste Numbers due to the ''derived-from'' and mixture rules. The waste is listed as D001, D003, D018, D019, D021, D022, D027, D028, D029, D030, D032, D033, D034, D035, D036, D038, D039, D040, F001, F003, F005, K009, K010, U001, U002, U003, U019, U028, U031, U037, U044, U056, U069, U070, U107, U108, U112, U113, U115, U117, U122, U140, U147, U151, U154, U159, U161, U169, U190, U196, U211, U213, U226, U239, and U359. The listed constituents of concern for these EPA Hazardous Waste Numbers are shown in Table 1. See, part 261, Appendix VII.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

Waste code	Basis for characteristic/listing
D001	Ignitability.
D003	Reactivity.
D018	Benzene.
D019	Carbon Tetrachloride.
D021	Chlorobenzene.
D022	Chloroform.
D027	1,4–Dichlorobenzene.
D028	1,2–Dichloroethane.
D029	1,1–Dichloroethylene.
D030	2,4–Dinitrotoluene.
D032	Hexaclorobenzene.
D033	Hexachlorobutadiene.
D034	Hexachloroethane.
D035	Methyl ethyl ketone.
D036	Nitrobenzene.
D038	Pyridine.
D039	Tetrachloroethylene.
D040	Trichloroethylene.
F001	Tetrachloroethylene, methylene chloride, Trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, Trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2 trichfluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	Not applicable, waste is hazardous because it fails the test for characteristics of ignitability, corrosivity, or reactivity.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
U001	Acetaldehyde.
U002	Acetone.
U003	Acetonitrile.
U019	Benzene.
U028	Benzenetrichloride.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS—Continued

Waste code	Basis for characteristic/listing
U031	n-Butyl alcohol.
U037	Chlorobenzene.
U044	Chloroform.
U056	Cyclohexane.
U069	Dibutyl phthlate.
U070	o-Dichlorobenzene.
U107	Di-n-octyl-phthlate.
U108	1,4-Diethyleneoxide.
U112	Ethyl acetate.
U113	Ethyl acrylate.
U115	Ethlene oxide.
U117	Ethyl ether.
U122	Formaldehyde.
U140	Isobutyl alcohol.
U147	Maleic anhydride.
U151	Mercury.
U154	Methanol.
U159	Methyl ethyl ketone.
U161	Methyl isobutyl ketone.
U169	Nitrobenzene.
U190	Phthalic anhydride.
U196	Pyridine.
U211	Carbon Tetrachloride.
U213	Tetrahydrofuran.
U226	1,1,1–Trichloroethane (methyl chloroform).
U239	Xylene.
U359	Ethylene glycol monoethyl ether.

Texas Eastman petitioned EPA to exclude this annual volume of FBI ash because it does not believe that the waste meets the criteria for which it was listed. Texas Eastman also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the HSWA of 1984. See, section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

In support of its petition, which included the sampling and analysis plan and ground water monitoring data from the landfill, Texas Eastman submitted: (1) Descriptions of its wastewater treatment processes and the incineration activities associated with the petitioned waste; (2) results from total constituent analyses for the Toxicity Characteristic (TC) metals listed in § 261.24 (i.e., the TC metals) antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc from representative samples of the waste; (3) results from the Toxicity Characteristic Leaching Procedure (TCLP), (SW–846 Method 1311) for the TC metals antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc from representative samples of the waste; (4) results from the Multiple Extraction Procedure (MEP), (SW–846 Method 1330) for antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc from representative samples of the waste; (5) test results from the total constituent analyses for dioxins/furans from representative samples of the waste; (6) results from total oil and grease analyses from representative samples of the waste; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; (8) results from total constituent and TCLP analyses for 40 CFR Part 264 Appendix IX volatile and semi-volatile organic compounds from representative samples of the waste; and (9) results from the Land Disposal Restriction Analysis performed on the untreated ash. Texas Eastman also provided total constituent analyses and for the biological treatment sludge, scrubber water blowdown, influent wastewater and waste liquid fuel associated with the generation of the FBI ash.

B. Summary of Response to Comments

The EPA received public comment on the June 25, 1996, proposal from one interested party, Texas Eastman. The commenter provided a variety of clarifications and corrections, primarily for the record, on various items and details addressed in the proposed rule. The commenter also recommended slight modifications to the proposed language for the testing conditions detailed in the regulatory exclusion. Specifically, Texas Eastman would like paragraph 5 of the verification testing conditions revised so the data submittal for the initial testing will occur 90 days after the receipt of the validated analytical results instead of 90 days after the incineration of the wastewater treatment sludge as stated in the proposed rule. Texas Eastman also expressed concerns regarding the delisting levels of several constituents, benzo(a)pyrene, benzo(a) anthracene, benzo(b)fluoranthene, 1,4-dioxane, and methylene chloride. Texas Eastman states that the delisting levels are significantly lower than the Practical Quantitation Limits (PQLs) for the methods commonly used to analyze these constituents and that the delisting level for methylene chloride, does not account for the fact that it is a common laboratory contaminant.

Response: The EPA will revise the verification testing condition language in paragraph as suggested by Texas Eastman to account for laboratory analysis time, validation, and compilation of the data collected. The EPA recognizes that determination of some organic constituents using SW–846 analytical methods may be difficult. However, delisting levels for the leachable organic concentrations are not set at PQLs, because PQLs are matrix dependent. The EPA understands that

using current analytical methodologies, Texas Eastman may not be able to obtain quantitation levels for some of the constituents below the delisting levels set in paragraph 1 (B). For these constituents, EPA will accept data that are reported as ''not detected'' or ''below the detection limit'' as long as an appropriate analytical method is used, the detection limit reported is reasonable for the analyzed matrix, and that all of the required Quality Assurance/Quality Control information is provided and is determined to be adequate. In the case for methylene chloride, EPA can not allow the concentration of any constituent detected in the waste to exceed the maximum allowable leachate concentration, even common laboratory contaminants. The health-based level for methylene chloride is 1.0×10^{-2} mg/l, so the maximum allowable leachate concentration is 0.45, using the dilution attenuation factor of 45. In the information provided to support the Texas Eastman petition, methylene chloride did not appear at concentrations above the delisting level in the leachate samples of the waste.

C. Final Agency Decision

For reasons stated in both the proposal and this notice, EPA believes that Texas Eastman's FBI ash should be excluded from hazardous waste control. The EPA, therefore, is granting a final exclusion to Eastman Chemical Company-Texas Eastman Division, located in Longview, Texas, for its FBI ash. This exclusion applies to the waste described in the petition, only if the requirements described in Table 1 of part 261 are satisfied. The maximum annual volume of FBI ash covered by this exclusion is 7,000 cubic yards.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their wastes under the State law.

Furthermore, some States (e.g., Louisiana, Georgia, Illinois) are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, Texas Eastman must obtain delisting authorization from that State before the waste can be managed as non-hazardous in the State.

IV. Effective Date

This rule is effective September 25, 1996. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. This proposal to grant an exclusion is not significant since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact due to today's rule. Therefore, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory

proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and Recordkeeping Requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. § 6921(f).

Dated: September 17, 1996.

Jerry Clifford,

Deputy Regional Administrator.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Tables 1, 2, and 3 of Appendix IX of part 261 are amended by adding the following waste stream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Texas Eastman	Longview, Texas	Incinerator ash (at a maximum generation of 7,000 cubic yards per calendar year) generated from the incineration of sludge from the wastewater treatment plant (EPA Hazardous Waste No. D001, D003, D018, D019, D021, D022, D027, D028, D029, D030, D032, D033, D034, D035, D036, D038, D039, D040, F001, F002, F003, F005, and that is disposed of in Subtitle D landfills after September 25, 1996. Texas Eastman must implement a testing program that meets the following conditions for the petition to be valid: 1. *Delisting Levels:* All leachable concentrations for those metals must not exceed the following levels (mg/l). Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR § 261.24. (A) Inorganic Constituents Antimony—0.27; Arsenic—2.25; Barium—90.0; Beryllium—0.0009; Cadmium—0.225; Chromium—4.5; Cobalt—94.5; Copper—58.5; Lead—0.675; Mercury—0.045; Nickel—4.5; Selenium—1.0; Silver—5.0; Thallium—0.135; Tin—945.0; Vanadium—13.5; Zinc—450.0 (B) Organic Constituents Acenaphthene—90.0; Acetone—180.0; Benzene—0.135; Benzo(a)anthracene—0.00347; Benzo(a)pyrene—0.00045; Benzo(b) fluoranthene—0.00320; Bis(2 ethylhexyl) phthalate—0.27; Butylbenzyl phthalate—315.0; Chloroform—0.45; Chlorobenzene—31.5; Carbon Disulfide—180.0; Chrysene—0.1215; 1,2–Dichlorobenzene—135.0; 1,4–Dichlorobenzene—0.18; Di-n-butyl phthalate—180.0; Di-n-octyl phthalate—35.0; 1,4 Dioxane—0.36; Ethyl Acetate—1350.0; Ethyl Ether—315.0; Ethylbenzene—180.0; Flouranthene—45.0; Fluorene—45.0; 1–Butanol—180.0; Methyl Ethyl Ketone—200.0; Methylene Chloride—0.45; Methyl Isobutyl Ketone—90.0; Naphthalene—45.0; Pyrene—45.0; Toluene—315.0; Xylenes—3150.0 2. *Waste Holding and Handling:* Texas Eastman must store in accordance with its RCRA permit, or continue to dispose of as hazardous all FBI ash generated until the Initial and Subsequent Verification Testing described in Paragraph 4 and 5 below is completed and valid analyses demonstrate that all Verification Testing Conditions are satisfied. After completion of Initial and Subsequent Verification Testing, if the levels of constituents measured in the samples of the FBI ash do not exceed the levels set forth in Paragraph 1 above, and written notification is given by EPA, then the waste is non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		3. *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing described in Paragraph 4 below, Texas Eastman may replace the testing required in Paragraph 4 with the testing required in Paragraph 5 below. Texas Eastman must, however, continue to test as specified in Paragraph 4 until notified by EPA in writing that testing in Paragraph 4 may be replaced by the testing described in Paragraph 5. 4. *Initial Verification Testing:* During the first 40 operating days of the FBI incinerator after the final exclusion is granted, Texas Eastman must collect and analyze daily composites of the FBI ash. Daily composites must be composed of representative grab samples collected every 6 hours during each 24-hour FBI operating cycle. The FBI ash must be analyzed, prior to disposal of the ash, for all constituents listed in Paragraph 1. Texas Eastman must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after receipt of the validated analytical results. 5. *Subsequent Verification Testing:* Following the completion of the Initial Verification Testing, Texas Eastman may request to monitor operating conditions and analyze samples representative of each quarter of operation during the first year of ash generation. The samples must represent the untreated ash generated over one quarter. Following written notification from EPA, Texas Eastman may begin the quarterly testing described in this Paragraph. 6. *Termination of Organic Testing:* Texas Eastman must continue testing as required under Paragraph 5 for organic constituents specified in Paragraph 1 until the analyses submitted under Paragraph 5 show a minimum of two consecutive quarterly samples below the delisting levels in Paragraph 1. Texas Eastman may then request that quarterly organic testing be terminated. After EPA notifies Texas Eastman in writing it may terminate quarterly organic testing. 7. *Annual Testing:* Following termination of quarterly testing under either Paragraphs 5 or 6, Texas Eastman must continue to test a representative composite sample for all constituents listed in Paragraph 1 (including organics) on an annual basis (no later than twelve months after the date that the final exclusion is effective). 8. *Changes in Operating Conditions:* If Texas Eastman significantly changes the incineration process described in its petition or implements any new manufacturing or production process(es) which generate(s) the ash and which may or could affect the composition or type of waste generated established under Paragraph 3 (by illustration {but not limitation}, use of stabilization reagents or operating conditions of the fluidized bed incinerator), Texas Eastman must notify the EPA in writing and may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in Paragraph 1 and it has received written approval to do so from EPA. 9. *Data Submittals:* The data obtained through Paragraph 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Paragraph 3 must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC 1001 and 42 USC 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. 10. *Notification Requirements:* Texas Eastman must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Texas Eastman	Longview, Texas	Incinerator ash (at a maximum generation of 7,000 cubic yards per calendar year) generated from the incineration of sludge from the wastewater treatment plant (EPA Hazardous Waste No. K009 and K010, and that is disposed of in Subtitle D landfills after September 25, 1996. Texas Eastman must implement a testing program that meets conditions found in Table 1. Wastes Excluded From Non-Specific Sources for the petition to be valid.

TABLE 3.—WASTES EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
*	*	* * * * *
Texas Eastman	Longview, Texas	Incinerator ash (at a maximum generation of 7,000 cubic yards per calendar year) generated from the incineration of sludge from the wastewater treatment plant (EPA Hazardous Waste No. U001, U002, U003, U019, U028, U031, U037, U044, U056, U069, U070, U107, U108, U112, U113, U115, U117, U122, U140, U147, U151, U154, U159, U161, U169, U190, U196, U211, U213, U226, U239, and U359, and that is disposed of in Subtitle D landfills after September 25, 1996. Texas Eastman must implement the testing program described in Table 1. Wastes Excluded From Non-Specific Sources for the petition to be valid.
*	*	* * * * *

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 43 and 64

[CC Docket No. 96–193; FCC 96–370]

Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order revises the Commission's rules to require only annual Automated Reporting Management Information System (''ARMIS'') reports and annual Cost Allocation Manual revisions. These changes were required by the Telecommunications Act of 1996. Because the 1996 Act did not specify how we should measure inflation in adjusting references to carrier revenues, we also adopt interim rules to adjust those references for inflation using a generally available inflation index. The intended effect of this action is to

reduce the more frequent filings we previously required.

EFFECTIVE DATE: September 25, 1996.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Accounting and Audits Division, Common Carrier Bureau at 202–418–0850.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order implementing Sections 402(b)(2)(B) and 402(c) of the Telecommunications Act of 1996 adopted September 3, 1996 and released September 11, 1996. The full text of this Commission Order is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcript Service (202) 857–3800, 1919 M St., N.W., Suite 246, Washington, D.C. 20554.

2. The Commission has not published a notice of proposed rulemaking, as allowed by 5 U.S.C. 553(b)(B) when the agency determines, for good cause, that it is unnecessary to publish a proposed rule and obtain comments from interested persons. The Commission has determined that publication of a proposed rule is unnecessary for the following reasons. The rule changes to require only annual ARMIS reports and cost allocation manual revisions merely implement the requirements of the 1996 Act and involve no discretionary action by the Commission. The changes to revenue thresholds are necessary to comply with the effective date of the statutory directive. Providing prior notice and an opportunity to comment would be impracticable and contrary to the public interest.

3. Paperwork Reduction Analysis: Public reporting burden for this collection of information is estimated to average 220 hours per response, including the time frame for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project (3060–0511), Washington, D.C. 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0511), Washington, D.C. 20503.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to Sections 402(b)(2)(B) and 402(c) of the Telecommunications Act of 1996, Pub. L. No. 104–104, sec. 402(b)(2)(B) and 402(c), and Sections 1, 4, 201–205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(a), 154, 201–205, 215, 218 and 220, and Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), Parts 32, 43, and 64 of the Commission's rules, 47 CFR Parts 32, 43, and 64 *are amended*, as set forth below.

It is further ordered that this Report and Order will be effective September 25, 1996.

List of Subjects in 47 CFR Parts 32, 43 and 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Parts 32, 43 and 64 of Title 47 of the CFR are amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 is revised to read as follows:

Authority: 47 U.S.C. 154.

2. Section 32.11 is amended by revising paragraphs (a) (1) and (a)(2) to read as follows:

§ 32.11 Classification of companies.

(a) * * *

(1) *Class A.* Companies having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold.

(2) *Class B.* Companies having annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold.

* * * * *

3. Section 32.9000 is amended by adding the definition of ''Indexed revenue threshold for a given year'' in alphabetical order to read as follows:

§ 32.9000 Glossary of terms.

* * * * *

Indexed revenue threshold for a given year means $100 million, adjusted for inflation, as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index (GDP–CPI), for the period from October 19, 1992 to the given year. The indexed revenue threshold for a given year shall be determined by multiplying $100 million by the ratio of the annual value of the GDP–CPI for the given year to the estimated seasonally adjusted GDP–CPI on October 19, 1992. The indexed revenue threshold shall be rounded to the nearest $1 million. The seasonally adjusted GDP–CPI on October 19, 1992 is determined to be 100.69.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 is revised to read as follows:

Authority: 47 U.S.C. 154.

2. Section 43.21 is amended by revising the first two sentences of paragraph (a), revising paragraph (c), revising the first two sentences of paragraph (d), revising the introductory text of paragraph (f), and adding new paragraph (g) to read as follows:

§ 43.21 Annual reports of carriers and certain affiliates.

(a) Communication common carriers having annual operating revenues in excess of the indexed revenue threshold, as defined in § 32.9000, and certain companies (as indicated in paragraph (c) of this section) directly or indirectly controlling such carriers shall file with the Commission annual reports or an annual letter as provided in this section. Except as provided in paragraphs (c), (e), (f), and (g) of this section, each annual report required by this section shall be filed not later than March 31 of each year, covering the preceding calendar year. * * *

* * * * *

(c) Each company, not itself a communication common carrier, that directly or indirectly controls any communication common carrier that has annual operating revenues equal to or above the indexed revenue threshold shall file annually with the Commission, not later than the date prescribed by the Securities and Exchange Commission for its purposes, two complete copies of any annual report Forms 10–K (or any superseding form) filed with that Commission.

(d) Each miscellaneous common carrier (as defined by § 21.2 of this chapter) with operating revenues for a calendar year in excess of the indexed revenue threshold shall file with the Common Carrier Bureau Chief a letter showing its operating revenues for that year and the value of its total

communications plant at the end of that year. Each record carrier with operating revenues for a calendar year in excess of three-fourths of the indexed revenue threshold shall file a letter showing selected income statement and balance sheet items for that year with the Common Carrier Bureau Chief. * * *

* * * * *

(f) Each local exchange carrier with annual operating revenues equal to or above the indexed revenue threshold shall file, no later than April 1 of each year, reports showing:

* * * * *

(g) Each local exchange carrier with operating revenues for the preceding year that are equal to or above the indexed revenue threshold shall file, no later than April 1 of each year, a report showing for the previous calendar year its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as are required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into common line, traffic sensitive access, special access and nonaccess.

3. Section 43.22 is revised to read as follows:

§ 43.22 Quarterly reports of communication common carriers.

Each designated interstate carrier with operating revenues for the preceding year that are equal to or above the indexed revenue threshold shall file, by March 31, June 30, September 30, and December 31 of each year, a report showing for the previous calendar quarter its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as are required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into the major services.

4. Section 43.41 is amended by revising the first sentence to read as follows:

§ 43.41 Reports on Inside Wiring Services.

Each local exchange carrier with annual operating revenues equal to or above the indexed revenue threshold shall file, within thirty (30) days of its publication or release, a copy of any state or local statute, rule, order, or other document that regulates, or proposes to regulate, the price or prices the local exchange carrier charges for inside wiring services. * * *

5. Paragraph (a) of section 43.43 is revised to read as follows:

§ 43.43 Reports of proposed changes in depreciation rates.

(a) Each communication common carrier with annual operating revenues equal to or above the indexed revenue threshold and which has been found by this Commission to be a dominant carrier with respect to any communications service shall, before making any change in the depreciation rates applicable to its operated plant, file with the Commission a report furnishing the data described in the subsequent paragraphs of this section, and also comply with the other requirements thereof.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is revised to read as follows:

Authority: 47 U.S.C. 154.

2. Section 64.903 is amended by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 64.903 Cost Allocation Manuals.

(a) Each local exchange carrier with annual operating revenues equal to or above the indexed revenue threshold, as defined in § 32.9000 of this chapter, shall file with the Commission a manual containing the following information regarding its allocation of costs between regulated and nonregulated activities:

* * * * *

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 60 days before the carrier plans to implement the changes. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Chief, Common Carrier Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure.

* * * * *

[FR Doc. 96–24473 Filed 9–24–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–38; RM–8759]

Radio Broadcasting Services; Delta, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 277C2 to Delta, Colorado, as that community's second local FM service, in response to a petition for rule making filed on behalf of Blink Communications, Inc. *See* 61 FR 10977, March 18, 1996. Coordinates used for Channel 277C2 at Delta are 38–44–24 and 108–04–00. With this action, the proceeding is terminated.

DATES: Effective October 28, 1996. The window period for filing applications will open on October 28, 1996, and close on November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 277C2 at Delta, Colorado, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–38, adopted September 6, 1996, and released September 13, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 277C2 at Delta.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–24471 Filed 9–24–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–165; RM–8703]

Radio Broadcasting Services; Elberton, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Chase Communications, allots Channel 286A to Elberton, Georgia, as the community's second local FM channel. *See* 60 FR 56310, November 8, 1995. Channel 286A can be allotted to Elberton in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 kilometers (7.7 miles) south, at coordinates 33–59–59 NL; 82–51–36 WL, to avoid a short-spacing to Stations WCCP-FM, Channel 285A, Clemson, South Carolina, and WHEL, Channel 286A, Helen, Georgia. With this action, this proceeding is terminated.

DATES: Effective October 28, 1996. The window period for filing applications will open on October 28, 1996, and close on November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–165, adopted September 6, 1996, and released September 13, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Channel 286A at Elberton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–24470 Filed 9–24–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–7; RM–8561]

Radio Broadcasting Services; Coleman, Sebewaing and Tuscola, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 268A for Channel 269A at Tuscola, Michigan and modifies the license for Station WWBN accordingly, in response to a proposal filed by Faircom Flint, Inc. *See* 60 FR 5157, January 26, 1995. The coordinates for Channel 268A at Tuscola are 43–16–02 and 83–45–34. To accomodate the substitution at Tuscola, we shall also substitute Channel 269A for Channel 268A at Coleman, Michigan, and modify the license for Station WPRJ to specify operation on Channel 269A at coordinates 43–48–41 and 84–27–57. Canadian concurrence has been obtained for both allotments. The *Notice* proposed to substitute Channel 281A for vacant Channel 267A at Sebewaing, Michigan, or delete the channel if no interest was expressed in retaining an allotment in the community. Since no interest has been expressed for retention of a channel in Sebewaing, Michigan, we shall delete the channel. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–7, adopted September 6, 1996, and released September 13, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 269A and adding Channel 268A at Tuscola, removing Channel 268A and adding Channel 269A at Coleman and removing Sebewaing, Channel 267A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–24469 Filed 9–24–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–51; RM–8764]

Radio Broadcasting Services; Wellington, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 232C3 to Wellington, Colorado, as that community's first local FM transmission service, in response to a petition for rule making filed by Victor A. Michael, Jr. *See* 61 FR 3551, March 29, 1996. Coordinates used for Channel 232C3 at Wellington are 40–53–57 North Latitude and 105–01–53 West

Longitude. With this action, the proceeding is terminated.

DATES: Effective October 28,1996. The window period for filing applications will open on October 28, 1996, and close on November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 232C3 at Wellington, Colorado, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 96–51, adopted September 6, 1996, and released September 13, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Wellington, Channel 232C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–24468 Filed 9–24–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Parts 1201, 1202, 1205, 1209, 1210, 1211, 1212, 1213, 1215, 1216, 1219, 1220, 1224, 1233, 1237, 1247, 1252, and 1253

RIN 2105–AC59

Revision of Department of Transportation Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Transportation Acquisition Regulation (TAR) to reflect restructuring and modified coverage that is made necessary by the Federal Acquisition Streamlining Act of 1994.

EFFECTIVE DATE: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Hawkins, Office of Acquisition and Grant Management, M–61, 400 Seventh Street S.W., Washington, DC 20590: (202) 366–6688.

SUPPLEMENTARY INFORMATION:

A. Background

Implementation of the Federal Acquisition Streamlining Act (FASA) of 1994 resulted in changes to the Federal Acquisition Regulation (FAR). The FAR was modified to provide additional coverage to implement the Act and restructure parts of the FAR to accommodate the changes (particularly Parts 10, 11, and 12). The Transportation Acquisition Regulation (TAR) is being modified to reflect the restructuring and modified coverage in the FAR. The TAR coverage restructures Parts 1210, 1211, and 1212, part title changes, deletes some prior coverage and reflects an internal delegation to the United States Coast Guard. Part 1211 is being newly added and Parts 1201 and 1252 is being renumbered to reflect the restructuring of the TAR.

B. Regulatory Analysis and Notices

This final rule is not significant under Executive Order 12866 of the Department's Regulatory Policies and Procedures. It does not amend a rule having substantial public interest and we expect no economic impacts or Federalism impacts as a result of this rule.

C. Regulatory Flexibility Act

This proposal is not expected to have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged. An Initial Regulatory Flexibility Analysis has not been performed.

D. Paperwork Reduction Act

There are no information collection requirements associated with this rule.

E. Administrative Procedure Act

A general notice of proposed rulemaking was not published in the Federal Register because that notice and public procedure are unnecessary. This final rule revises agency specifies in the Transportation Acquisition Regulation to conform to the restructuring and revision of the document it supplements, the Federal Acquisition Regulation. The Department has little discretion in adopting these technical changes. We do not anticipate that we would receive meaningful comments on these amendments.

List of Subjects in 48 CFR Parts 1201, 1202, 1205, 1209, 1210, 1211, 1212, 1213, 1215, 1216, 1219, 1220, 1224, 1233, 1237, 1247, 1252, and 1253

Government procurement.

This final rule is issued pursuant to delegated authority under 49 CFR part 1.59(p). This authority has been redelegated to the Senior Procurement Executive.

Issued this 12th day of September 1996, at Washington, DC.

David J. Litman,

Director of Acquisition and Grant Management.

Adoption of Amendments

Title 48 of the Code of Federal Regulations, Parts 1201, 1202, 1205, 1209, 1210, 1211, 1212, 1213, 1215, 1216, 1219, 1220, 1224, 1233, 1237, 1247, 1252, and 1253 are amended to read as set forth below:

1. The authority citation for 48 CFR parts 1201, 1202, 1205, 1209, 1210, 1211, 1212, 1213, 1215, 1216, 1219, 1220, 1224, 1233, 1237, 1247, 1252, and 1253 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1201.104–2—[Amended]

2. Subpart 1201.1 is amended by removing ''OST—Office of the Secretary'' under 1201.104–2 and adding ''TASC—Transportation Administrative Service Center'' and by redesignating §§ 1201.102 through 1201.105 as follows:

1201.102 through 1201.105 [Redesignated as 1201.103 through 1201.106]

Old section	New section
1201.102	1201.103
1201.103	1201.104
1201.104	1201.105
1201.104–1	1201.105–1
1201.104–2	1201.105–2
1201.104–3	1201.105–3
1201.105	1201.106

3. In subpart 1201.470, § 1201.403 is revised to read as follows:

Subpart 1201.403—Individual Deviations

The authority of the agency head under (FAR) 48 CFR 1.403 and (TAR) 48 CFR chapter 12 is delegated to the Head of the Contracting Activity or designee no lower than Senior Executive Service (SES)/Flag Officer level. However, see Transportation Acquisition Manual (TAM) 1201.403. The TAM is available through the Government Printing Office.

4. Subpart 1201.6 title is revised to read as follows:

Subpart 1201.6—Career Development, Contracting Authority and Responsibilities

PART 1202—DEFINITIONS OF WORDS AND TERMS

5. Section 1202.1, paragraph (i)(7) is revised to read as follows:

1202.1 Definitions.

* * * * *

(i) * * *

(7) Transportation Administrative Service Center/Office of the Secretary (OST).

* * * * *

PART 1205—PUBLICIZING CONTRACT ACTIONS

6. Section 1205.101, paragraph (a)(2), is removed and paragraph (a)2)(iii) is added to read as follows:

1205.101 Methods of disseminating information.

(a)(2)(iii) Contracting officers shall post solicitations expected to exceed $25,000, if required in OA procedures.

PART 1209—CONTRACTOR QUALIFICATIONS

Subpart 1209.4—[Removed]

7. Subpart 1209.4 (1209.406 through 1209.407–3) is removed and § 1209.507 is revised to read as follows:

1209.507 Solicitation provisions.

The contracting officer may insert the provision at (TAR) 48 CFR 1252.209–70, ''Disclosure of Conflicts of Interest'' in all solicitations for negotiated acquisitions, when simplified acquisitions procedures in (FAR) 48 CFR Part 13, are not used and when the contracting officer believes the conditions enumerated in (FAR) 48 CFR 9.507–2 warrant inclusion.

PART 1210—MARKET RESEARCH—[RESERVED]

8. The heading of part 1210 is revised, §§ 1210.004 through 1210.011–90 are removed and the subpart is reserved.

PART 1211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL ITEMS

9. Part 1211 is added to read as follows:

PART 1211—DESCRIBING AGENCY NEEDS

Subpart 1211.6—Priorities and Allocations

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

Subpart 1211.6—Priorities and Allocations

1211.602 General.

(c) The USCG is the only DOT OA delegated authority under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700) to assign priority ratings on contracts and orders placed with contractors to acquire products, materials, and services in support of USCG certified national defense related programs.

1211.204–90 Solicitation provision and contract clause (USCG).

(a) The contracting officer shall insert the USCG clause at (TAR) 48 CFR 1252.211–90, Bar Coding Requirement (also see (TAR) 48 CFR 1213.507–90(a)) when the bar coding of supplies is necessary for the USCG.

(b) See (TAR) 48 CFR 1213.507–90 for a provision which is required when the USCG clause at (TAR) 48 CFR 1252.211–90, Bar Coding Requirement, is used with simplified acquisition procedures.

PART 1212—ACQUISITION OF COMMERCIAL ITEMS—[RESERVED]

10. The heading of part 1212 is revised to read as set forth above, subparts 1213.1 (§ 1213.107–90) and 1213.5 (§ 1213.5) are removed and the part is reserved.

PART 1213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1213.107–90 [Amended]

11. Section 1213.107–90 is amended by correcting the reference to USCG provision ''1252.210–90'' to read ''1252.213–90'' and reference to USCG clause ''1252.210–90(a)'' to read ''1252.211–90'' and revise the words ''in small purchases'' to read ''with simplified acquisition procedures''.

1213.507–90 [Amended]

12. Section 1213.507–90 is amended by correcting the reference to USCG clause ''1252.210–90'' to read ''1252.211–90''.

PART 1215—CONTRACTING BY NEGOTIATION

1215.407, 1215.804, and 1215.804–2 [Removed]

13. In part 1215, §§ 1215.407, 1215.804, and 1215.804–2 are removed.

14. The heading of § 1215.804–6 is revised to read as follows:

1215.804–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

PART 1216—TYPES OF CONTRACTS

15. In part 1216, subpart 1216.5 is added to read as follows:

Subpart 1216.5—Indefinite-Delivery Contracts

1216.505 Ordering.

(b)(4) Unless otherwise provided in OA procedures, the OA Competition Advocate is designated as the OA Task and Delivery Order Ombudsman.

(i) If any corrective action is needed after reviewing complaints from contractors on task and delivery order contracts, the OA Ombudsman shall provide a written determination of such action to the contracting officer.

(ii) Issues that cannot be resolved within the OA, are to be forwarded to the DOT Task and Delivery Order Ombudsman for review and resolution.

PART 1219—SMALL BUSINESS PROGRAMS

16. Part 1219 title is revised to read as set forth above and subpart 1219.7 title is revised to read ''Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns''. The last sentence of § 1219.201(c) is removed. Appendix A following

§ 1219.006 is designated as Subpart A to Subpart 1219.10 and items (4) and (6) are revised to read as follows:

Appendix A to Subpart 1219.10

Targeted industry categories	FPDs product and service code
* * * * *	
(4) Maintenance, Repair, and Rebuilding of engines, turbines, components and weapons equipment.	J028/J010
* * * * *	
(6) ADP Support Equipment	7035
* * * * *	

PART 1220—LABOR SURPLUS AREA CONTRACTING

17. Part 1220 title is revised to read as set forth above.

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

18. In part 1224, § 1224.000 is removed and § 1224.103 is added to subpart 1224.1 to read as follows:

1224.103 Procedures.

DOT's rules and regulations implementing the Privacy Act of 1974 are located at 49 CFR Part 10.

PART 1233—PROTESTS, DISPUTES, AND APPEALS

19. Section 1233.214 is amended by removing paragraph (d) and redesignating paragraphs (b) and (c) as (c) and (d), revising the introductory text of newly redesignated paragraph (c) and paragraph (d) to read as follows:

1233.214 Alternative dispute resolution (ADR).

(c) The Administrative Dispute Resolution Act (ADRA), Pub. L. 101–552, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. The DOTBCA Alternate Dispute Resolution (ADR) procedures are contained in 48 CFR chapter 63, Section 6302.30, ADR Methods (Rule 30), and will be distributed to the parties, if ADR procedures are used. These procedures may be obtained from the DOTBCA upon request. ADR procedures may be used when:

* * * * *

(d) DOT's Dispute Resolution Specialist in accordance with the ADRA is located in the DOT Office of the General Counsel, C–1. The Dispute Resolution Specialist performs the functions set forth in the Administrative Disputes Resolution Act for DOT operating administrations on a non-reimbursable basis. The Dispute Resolution Specialist may conduct any of the alternative means of dispute resolution set forth in Title 5, U.S.C. Section 581(3), including settlement negotiations under the auspices of a settlement judge, conciliation, facilitation, mediation, fact finding, mini-trials, and arbitration, or any combination of these methods.

PART 1237—SERVICE CONTRACTING

20. The heading of subpart 1237.1 is revised to read ''Service Contracts—General'' (table of contents listing remains unchanged). New subpart 1237.104, ''Personal Services Contracts'' and § 1237.104–90, ''Delegation of Authority (USCG)'' are added to read as follows:

Subpart 1237.104—Personal Services Contracts

1237.104–90 Delegation of authority (USCG).

(a) Pub. L. 104–106, DOD Authorization Act of 1996, Section 733, added Section 1091(A) to Title 10 of the United States Code, which authorizes contracting authority for personal service contracts for medical treatment facilities for the Coast Guard.

(b) The authority of the Secretary of Transportation under Pub. L. 104–106 to contract for personal service contracts for medical treatment facilities for the Coast Guard is delegated to the HCA with the authority to redelegate to contracting officers under procedures established by the Head of Contracting Activity, who will address applicable statutory limitations under Section 1091 of Title 10 U.S.C.

PART 1247—TRANSPORTATION

21. Section 1247.104–370 is amended by changing the reference to section number ''1252.247–1'' to read ''1252.247–70''; by amending 1247.305–70 (a), (b), (c), (d), (e), and (f) by revising the references to section numbers ''1252.247–2,'' ''1252.247–3,'' ''1252.247–4,'' ''1252.247–5,'' ''1252.247–6,'' and ''1252.247–7,'' to read ''1252.247–71,'' ''1252.247–72,'' ''1252–247–73,'' ''1252–247–74,'' ''1252–247–75,'' and ''1252.247–76,'' respectively; and by amending 1247.305–71 by revising the reference to section number ''1252.247–8'' to read ''1252.247–77''.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1252.210–70 and 1252.210–71 and 1252.247–1 through 1252.247–8 [Redesignated as 1252.211–70 and 1252.211–71 and 1252.247–70 through 1252.247–77]

22. Sections 1252.210–70 and 1252.210–71 and 1252.247–1 through 1252.247–8 are redesignated as follows:

Old section	New section
1252.210–70	1252.211–70
1252.210–71	1252.211–71
1252.247–1	1252.247–70
1252.247–2	1252.247–71
1252.247–3	1252.247–72
1252.247–4	1252.247–73
1252.247–5	1252.247–74
1252.247–6	1252.247–75
1252.247–7	1252.247–76
1252.247–8	1252.247–77

PART 1253—FORMS

In Appendix A to subpart 1253.3, the entries for 1252.210–70, 1252.210–71, 1252.247–1 through 1252.247–8 are removed and the following new entries are added in numerical order.

BILLING CODE 4910–62–P

TAR MATRIX

Key:

P or C = Provision or Clause
IBR = Is Incorporation By Reference authorized?
UCF = Uniform Contract Format Section, when applicable

R = Required
A = Required-When-Applicable
O = Optional

X = Revision

Principle type and/or purpose of contract:

FP SUP = Fixed-Price Supply
CR SUP = Cost-Reimbursement Supply
FP R&D = Fixed-Price Research & Development
CR R&D = Cost-Reimbursement Research & Development
FP SVC = Fixed-Price Service
CR SVC = Cost Reimbursement Service
FP CON = Fixed-Price Construction
CR CON = Cost Reimbursement Construction
T&M LH = Time & Material/Labor Hours
LMV = Leasing of Motor Vehicles
COM SVC = Communication Services
DDR = Dismantling, Demolition, or Removal of Improvements
A-E = Architect-Engineering
FAC = Facilities
IND DEL = Indefinite Delivery
TRN = Transportation
SP = Small Purchases
UTL SVC = Utility Services

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.211-70 Brand Name or Equal	1211.011	P	YES	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.211-71 Index for Specifications	1211.011	C	YES	I	A	A	A				A	A				A		A	A		A	
* * * * *																						
1252.247-70 Acceptable Service at Reduced Rates	1247.104-370	C	YES	I		A				A												
1252.247-71 F.O.B. Origin Information	1247.305-70	P	YES	L	A									A					A		A	
1252.247-72 F.O.B. Origin Only	1247.305-70	P	YES	L	A									A					A		A	
1252.247-73 F.O.B. Destination Only	1247.305-70	P	YES	L	A									A					A		A	
1252.247-74 Shipments to Ports and Air Terminals	1247.305-70	P	YES	L	A									A					A		A	
1252.247-75 F.O.B. Designated Air Carrier's Terminal, Port of Exportation	1247.305-70	P	YES	L	A									A					A		A	
1252.247-76 Nomination of Additional Ports	1247.305-70	P	YES	L	A									A					A		A	
1252.247-77 Supply Movement in the Defense Transportation System	1247.305-71	C	YES	F	A									A					A		A	

[FR Doc. 96-24302 Filed 9-24-96; 8:45 am]
BILLING CODE 4910-62-C

Research and Special Programs Administration

49 CFR Parts 172, 173, 174 and 179

[Docket No. HM–216; Amdt Nos. 172–148, 173–252, 174–83, 179–52]

RIN 2137–AC66

Transportation of Hazardous Materials by Rail; Miscellaneous Amendments; Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; editorial revisions and response to petitions for reconsideration.

SUMMARY: On June 5, 1996, RSPA published a final rule which amended the Hazardous Materials Regulations to incorporate a number of changes to rail requirements based on rulemaking petitions from industry and RSPA initiatives. The intended effect of the June 5, 1996 rule is to improve safety and reduce costs to offerors and transporters of hazardous materials. This final rule corrects errors in that final rule and responds to petitions for reconsideration.

DATES: *Effective date.* This final rule is effective October 1, 1996. The effective date for the final rule published under Docket HM–216 on June 5, 1996 (61 FR 28666) remains October 1, 1996.

Compliance date. However, compliance with the regulations is authorized from June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Washington DC, 20590–0001, or James H. Rader, telephone (202) 632–3339, Office of Safety Assurance and Compliance, Federal Railroad Administration, Washington DC, 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On June 5, 1996, RSPA issued a final rule under Docket HM–216 [61 FR 28666]. The final rule made changes to the HMR, applicable to rail carriers, shippers, and tank car owners and lessors, based on petitions for rulemaking submitted in accordance with 49 CFR 106.31 or agency initiative. RSPA received several petitions for reconsideration to the final rule concerning the voluntary compliance date of June 30, 1996, which allowed rail shippers and carriers to discontinue use of the RESIDUE placard. In a June 28, 1996 letter, RSPA denied these petitions for reconsideration. This letter of denial was published in the Federal Register on July 25, 1996 [61 FR 38643] and included a statement of enforcement policy by the Federal Railroad Administration (FRA).

In addition, RSPA received several other petitions for reconsideration, as well as other correspondence identifying errors or requesting clarification. This document incorporates editorial and technical revisions RSPA has determined are necessary to correct or clarify the final rule.

Because the amendments adopted herein clarify and relax certain provisions of the June 5, 1996 final rule, and impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective on the same effective date of the June 5, 1996 final rule, without the usual 30-day delay following publication.

II. Summary of Regulatory Changes Made by Section

Listed below is a section-by-section summary of the changes.

Part 172

Section 172.102. Special Provision B65 is revised by correcting two typographical errors. The ''Class DOT 105J'' reference should read ''Class DOT 105A'' and the wording ''safety relief device'' should read ''pressure relief device''.

Section 172.330. On July 3, 1996, The Chemical Manufacturers Association's Vinyl Chloride Panel Transportation Committee (CMA–VCC) filed a petition for reconsideration concerning the marking of tank cars containing vinyl chloride. CMA–VCC claimed that revised marking requirements adopted under Docket HM–216 are unduly burdensome because they require addition of the word ''stabilized'' or ''inhibited'' as part of the proper shipping name marked on the tank without a corresponding increase in safety. Further, CMA–VCC states that the remarking process is costly, primarily because the cars must be removed from service. In some cases, entire fleets will have to be removed from service over the next three months in order to achieve compliance. To reduce the burden on the industry, CMA–VCC requests a five-year period to comply with the rule. This five-year period coincides with the regular service schedule for these cars.

In a final rule issued December 29, 1994 under Docket HM–215A [59 FR 67390], the proper shipping name for ''Vinyl chloride'' was amended to add the word ''stabilized.'' A delayed compliance period provided under Docket HM–215A authorizes use of either proper shipping name (''Vinyl chloride'' or ''Vinyl chloride, stabilized'') until October 1, 1996. On or after that date, the word ''stabilized'' must appear as part of the proper shipping name. Based on pre-Docket HM–216 marking requirements in § 173.314, after October 1, 1996, the word ''stabilized'' would have been required to appear as part of the proper shipping name marking (provided such cars were marked after October 1, 1991; see § 172.302(f)).

The Docket HM–216 notice of proposed rulemaking proposed a reduction in the number of proper shipping names required to be marked on tank cars and also proposed that only the ''key words'' of the proper shipping name must be marked. Based on numerous comments, including those from the emergency response community, opposing these proposed changes in marking requirements, RSPA did not reduce the number of proper shipping names required to be marked on tank cars, but consolidated existing marking requirements into § 172.330. Limited relief was provided by adopting the proposal to require only key words of the proper shipping name to be marked; however, the final rule indicated that qualifying words, such as ''compressed,'' ''liquefied,'' ''stabilized'' and ''inhibited'' were considered to be ''key words.''

After further consideration, RSPA believes that certain qualifying words do not sufficiently enhance the effectiveness of this marking, and the parenthetical example in paragraph (a)(1)(ii) creates confusion as to which qualifying words in a proper shipping name must be considered ''key words.'' Consequently, RSPA is amending paragraph (a)(1)(ii) by removing the parenthetical wording ''(including words such as 'stabilized', 'inhibited', 'compressed', or 'liquefied')''. This change does not limit or prohibit the marking of additional words on a tank car. A tank car may be marked with words such as ''liquefied'' or ''stabilized''.

Section 172.514. In the section heading and paragraphs (a) and (b), the phrase ''other than a tank car'' is removed. Based on the removal of the ''RESIDUE'' placard in the June 5, 1996 final rule, this phrase is no longer necessary because placarding requirements for tank cars are the same as for other bulk packagings.

Part 173

Section 173.314. In the paragraph (c) table, in Column (3), the wording ''120A'' is corrected to read ''120'' for each commodity authorized in this tank car class.

Part 174

Section 174.24. In § 174.24, the first two sentences are revised to clarify that no person may accept or transport a hazardous material unless that person receives a shipping paper that contains the information required by part 172 (i.e., the proper shipping description, emergency response telephone number, and the shipper's certification). The paragraph is further clarified to state that only the initial carrier within the United States must receive and retain a copy of the offeror's certified shipping paper.

Section 174.85. In paragraph (c), a separation requirement is revised to clarify that a placarded tank car may not be used to separate a tank car containing a residue of a hazardous material from a locomotive or occupied caboose. This change makes consistent the requirements of paragraph (c) with those contained in paragraph (d). (Also see the preamble discussion in the final rule [61 FR 28666, 28670].)

Part 179

Section 179.15. In § 179.15, several editorial changes are made, and in paragraph (f)(1) a sentence is added to clarify that until October 1, 1998, a tank car must have a nonreclosing pressure relief device incorporating a rupture disc designed to burst at a pressure corresponding to the new requirements in this final rule or to the old requirements in effect on September 30, 1996.

A manufacturer of safety valves and safety vents for tank cars opposed the pressure relief device amendment that would allow for an increase in the start-to-discharge pressure from 30 percent to 33 percent of the tank burst pressure. This petitioner claimed that the change would reduce the level of safety by 10 percent, and that the change did not correspond to the ASME code as purported by RSPA. The petitioner further stated that the ASME code primarily deals with stationary pressure vessels where ''plants have maintenance departments that give their stationary valves tender loving care,'' and that ''[t]ank cars, on the other hand, are frequently looked upon as someone else's problem and their valves and fittings are given minimum attention.''

RSPA and FRA disagree. Prior to adoption of the HM–216 amendment, the HMR and several exemptions authorized an increase in the start-to-discharge pressure setting on the pressure relief device for several commodities, such as liquefied petroleum gas and anhydrous ammonia. This change simply expands the requirement to all commodities, including those that pose less risk in transportation. Further, the start-to-discharge pressure setting on the pressure relief device in the ASME code is partly based on the physical properties of the lading at a reference temperature, static head, and gas padding pressure in the tank. Because of the ASME code's wide use in stationary storage tanks, cargo tanks, and IM portable tanks, RSPA proposed and adopted the principal code for tank cars in Docket HM–216. Accordingly, the start-to-discharge pressure of a pressure relief device on a tank car is now based on the physical properties of the lading and not solely on the tank specification. Since the lading, and not the tank specification, ''drives'' the start-to-discharge pressure setting of the pressure relief device, this provision is now in harmony with the ASME code. Furthermore, the design of a tank car must account for the dynamic train-action loads that are transmitted into the tank shell (axial compression and bending moments). As such, tank wall thickness is more of a function of the train-action loads as opposed to simply lading retention. Therefore, a direct comparison between tank cars and the ASME code is not totally possible, especially when comparing levels of safety.

This petitioner also disagreed with RSPA and FRA's position that it was better to remove the disc from the vent in order to examine the disc for corrosion and damage. The petitioner explained that the construction of the disc does not allow an inspector to determine the condition of the disc and that removal of the disc can allow water and vapor to enter the tank or for pollutants to escape from the tank. Further, in order to disassemble the nonreclosing pressure relief device an offeror would have to step outside of the loading platform area, thus ''workers will be disinclined to take the discs out of the vents to look at the vacuum support side, so no inspection of the disc will take place.''

RSPA and FRA disagree. The preamble discussion in Docket HM–216 simply makes clear an offeror's responsibility—that each person who offers a hazardous material for transportation in a tank car must ensure that the ''tank car is in proper condition and safe for transportation.'' The provision also requires a ''careful inspection of the frangible [rupture] disc in non-reclosing pressure relief devices.'' A rupture disc failure in transportation poses a potential threat to human health and the environment. This threat is best mitigated by the careful inspection of the disc to ensure its integrity prior to transportation. A careful inspection does not simply mean a cursory look at the top of the disc; defects can and do arise in any material and on any surface, including the bottom side of the disc. Since non-reclosing pressure relief devices account for a large number of non-accident releases and railroad worker injuries, it simply cannot be argued that a partial inspection of the disc will qualify the whole disc for further use and help prevent such releases. Offerors must acknowledge that the cost of using a non-reclosing pressure relief device includes not just the purchase price, but also the cost of inspection, maintenance, and repair prior to each shipment. In cases where there is a concern about air and water vapors entering the tank or pollutants discharged from the tank, it is RSPA and FRA's opinion that the offeror should use a reclosing pressure relief device, as opposed to a nonreclosing pressure relief device that allows for the movement of unwanted vapors and pollutants into or out of the tank after disc rupture.

Section 179.100–7. In § 179.100–7, the minimum elongation requirements for AAR TC 128, Gr. B and ASTM A 302, Gr. B are corrected to read ''19'' and ''20'' respectively.

Section 179.201–4. A manufacturer of safety valves and safety vents for tank cars asked RSPA to amend § 179.201–4 to authorize the finishing of as cast internal surfaces of stainless castings prior to testing. Section 179.201–4 requires the use of a standard practice, ASTM–262, for detecting the susceptibility to intergranular attack in austenic stainless steels. ASTM–262 requires the surface of a test specimen to conform to the actual surface of the casting used in service. The standard further authorizes the finishing of the test specimen surface to remove foreign material and to obtain a standard, uniform finish, by polishing. As to the removal of surface carburization, caused by carbonaceous binders in the sand, the ASTM–262 standard prohibits grinding and machining to remove the carburized surface, except in tests undertaken to demonstrate such effects.

In 1988, this petitioner and the Association of American Railroads (AAR) reviewed the ASTM–262 standard as it applies to carburized surfaces. The review resulted in a 1988

amendment to Appendix M of the AAR Tank Car Manual that now allows for the finishing, by grinding and machining, on all surfaces prior to testing. Based on the recognized industry standard practice for detecting the susceptibility to intergranular attack in austenic stainless steel and these comments, RSPA is amending § 179.201–4 to authorize finishing, by machining or grinding, prior to testing.

Section 179.300–7. RSPA received one petition for reconsideration relating to the use of steels for the construction of multi-unit tank car tanks. The petitioner stated that the removal of steel specifications A285 and A515 will cause an enormous disruption to users of multi-unit tank car tanks and in particular to the chlorine industry, which uses A285 for forge welding Class DOT 106A multi-unit tank car tanks. The petitioner also asked RSPA to consider adding ASTM A516 Gr 70 to the table, since this material is often used in the construction of multi-unit tank car tanks under exemption (DOT-E 9157 and DOT-E 3216). RSPA agrees that the steel specifications in § 179.300–7 were inadvertently removed in the final rule. RSPA also is adding ASTM A516 Gr. 70 to the table based on comments received.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

The economic impact of this rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

The June 5, 1996 final rule, as amended herein, was analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material, and requirements respecting the number, content, and placement of such documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA determined that the effective date of Federal preemption for these requirements in the June 5, 1996 final rule would be October 1, 1996. The effective date of Federal preemption for the changes made in this final rule will be December 24, 1996.

C. Regulatory Flexibility Act

This final rule responds to petitions for reconsideration and agency review. It is intended to make editorial and technical corrections, provide clarification of the regulations and relax certain requirements. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172, 173, 174 and 179 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.102 [Amended]

2. In § 172.102, in paragraph (c)(3), for Special Provision B65, as amended at 61 FR 28675, effective October 1, 1996, the wording ''Class 105J'' is revised to read ''Class 105A'' and the wording ''safety relief device'' is revised to read ''pressure relief device''.

§ 172.330 [Amended]

3. In § 172.330, in paragraph (a)(1)(ii), as revised at 61 FR 28676, effective October 1, 1996, the wording ''(including words such as 'stabilized', 'inhibited', 'compressed', or 'liquefied')'' is removed.

§ 172.514 [Amended]

4. In § 172.514, the following changes are made:

a. In the section heading, the wording ''other than tank cars'' is removed.

b. In paragraph (a) and paragraph (b) introductory text, the wording ‘‘, other than a tank car,’’ is removed each place it appears.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5102–5127; 49 CFR 1.53.

§ 173.314 [Amended]

6. In § 173.314, in the paragraph (c) table, as amended at 61 FR 28677, effective October 1, 1996, in Column 3, the wording ‘‘120A’’ is revised to read ‘‘120’’ each place it appears.

PART 174—CARRIAGE BY RAIL

7. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. In § 174.24, as revised at 61 FR 28677, effective October 1, 1996, the first two sentences are revised to read as follows:

§ 174.24 Shipping papers.

A person may not accept or transport a hazardous material by rail unless that person receives a shipping paper that properly conveys the information required by part 172 of this subchapter. Only an initial carrier within the United States must receive and retain a copy of the shipper's certification as required by § 172.204 of this subchapter. * * *

§ 174.85 [Amended]

9. In § 174.85, in paragraph (c), as revised at 61 FR 28678, effective October 1, 1996, the wording ‘‘non-placarded rail car’’ is revised to read ‘‘rail car other than a placarded tank car’’.

PART 179—SPECIFICATIONS FOR TANK CARS

10. The authority citation for Part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

11. In § 179.15, as added at 61 FR 28678, effective October 1, 1996, paragraph (f)(1) is revised to read as follows:

§ 179.15 Pressure relief devices.

* * * * *

(f) * * *

(1) Until October 1, 1998, a nonreclosing pressure relief device must incorporate a rupture disc designed to burst at a pressure no less than 100% of the tank test pressure but no more than 33% of the tank burst pressure. After that date, a nonreclosing pressure relief device must incorporate a rupture disc designed to burst at 33% of the tank burst pressure.

* * * * *

§ 179.15 [Amended]

12. In addition, in § 179.15, the following changes are made:

a. In the introductory text, the wording ‘‘pressure relief system’’ is revised to read ‘‘pressure relief device, made of material compatible with the lading,’’.

b. In the paragraph (b) heading, the word ‘‘valves’’ is revised to read ‘‘devices’’.

c. In paragraph (b)(2)(i), the wording ‘‘start-to-discharge pressure’’ is revised to read ‘‘start-to-discharge pressure of a pressure relief device’’.

d. In the paragraph (c) heading, the word ‘‘systems’’ is revised to read ‘‘devices’’.

e. In paragraph (e) introductory text, at the end of the first sentence, the wording ‘‘nonreclosing pressure relief valve’’ is revised to read ‘‘reclosing pressure relief valve’’.

§ 179.100–7 [Amended]

13. In § 179.100–7, in the paragraph (a) table, as revised at 61 FR 28679, effective October 1, 1996, the following changes are made:

a. In the first entry, ‘‘AAR TC128, Gr. B’’, in the third column, the entry ‘‘20’’ is revised to read ‘‘19’’.

b. In the second entry, ‘‘ASTM A 302, Gr. B’’, in the third column, the entry ‘‘19’’ is revised to read ‘‘20’’.

§ 179.201–4 [Amended]

14. In § 179.201–4, as amended at 61 FR 28681, effective October 1, 1996, at the end of the paragraph, the wording ‘‘ASTM Specification A 262’’ is revised to read ‘‘ASTM Specification A 262, except that when preparing the specimen for testing the carburized surface may be finished by grinding or machining’’.

15. In § 179.300–7, as amended at 61 FR 28682, effective October 1, 1996, in the paragraph (a) table, the following entries are added in numerical order to read as follows:

§ 179.300–7 Materials.

(a) * * *

Specifications	Tensile strength (psi) welded condition [1] (minimum)	Elongation in 2 inches (percent) welded condition [1] (longitudinal) (minimum)
* * *	*	*
ASTM A285 Gr. A	45,000	29
ASTM A285 Gr. B	50,000	20
ASTM A285 Gr. C	55,000	20
ASTM A515 Gr. 65	65,000	20
ASTM A515 Gr. 70	70,000	20
ASTM A516 Gr. 70	70,000	20

[1] Maximum stresses to be used in calculations.

* * * * *

Issued in Washington, DC on September 16, 1996, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–24124 Filed 9–24–96; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 960126016–6121–04; I.D. 091796A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closure from the Oregon-California Border to Humboldt South Jetty, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the Oregon-California border (42°00’00’’ N. lat.) to Humboldt South Jetty, CA (40°45’53’’ N. lat.) was closed at 2400 hours local time (l.t.), September 14, 1996. The Regional Director, Northwest Region, NMFS (Regional Director), has determined that the commercial quota of 6,000 chinook salmon has been reached. This action is necessary to conform to the preseason announcement of the 1996 management measures and is intended to ensure conservation of chinook salmon.

DATES: Effective at 2400 hours l.t., September 14, 1996, through 2400 hours

l.t., September 15, 1996, at which time the season remains closed under the terms of the preseason announcement of the 1996 management measures. Comments will be accepted through October 9, 1996.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, or Hilda Diaz-Soltero, Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the Northwest Regional Office or Southwest Regional Office.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140, or Rodney R. McInnis, 310–980–4030.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by an inseason action issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the annual management measures for ocean salmon fisheries (61 FR 20175, May 6, 1996), NMFS announced that the 1996 commercial fishery in the area between the Oregon-California border and Humboldt South Jetty, CA, would open on September 1 and continue through September 15 or attainment of the 6,000 chinook salmon quota, whichever occurred first.

The best available information on September 12, 1996, indicated that catch and effort data and projections supported closure of the commercial fishery in the area between the Oregon-California border and Humboldt South Jetty, CA, at midnight, September 14, 1996.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the California Department of Fish and Game, and the Oregon Department of Fish and Wildlife regarding this closure. The State of California will manage the commercial fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason action procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 2400 hours local time, September 14, 1996, by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to stop the fishery upon achievement of the quota, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–24512 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 091996A]

Fisheries of the Exclusive Economic Zone off Alaska; ''Other Rockfish'' Species Group in the Eastern Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the ''other rockfish'' species group in the Eastern Regulatory Area of the Gulf of Alaska. This action is necessary to prevent exceeding the ''other rockfish'' species group total allowable catch (TAC) in the Eastern Regulatory Area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), September 22, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 679.

In accordance with § 679.20(c)(3)(ii), the ''other rockfish'' species group TAC for the Eastern Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 750 metric tons (mt).

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined, in accordance with § 679.20(d)(1), that the ''other rockfish'' species group TAC in the Eastern Regulatory Area soon will be reached. Therefore, the Regional Administrator has established a directed fishing allowance of 700 mt, with consideration that 50 mt will be taken as incidental catch in directed fishing for other species in the Eastern Regulatory Area. The Regional Administrator has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the ''other rockfish'' species group in the Eastern Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under § 679.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–24510 Filed 9–19–96; 5:04 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 091896A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1996 pollock total allowable catch (TAC) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), September 19, 1996, until 2400 hrs, December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1996 pollock TAC in Statistical Area 620 was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 12,840 metric tons (mt). (See § 679.20(c)(3).)

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined, in accordance with § 679.20(d)(1), that the 1996 pollock TAC in Statistical Area 620 soon will be reached. The Regional Administrator established a directed fishing allowance of 11,340 mt, and has set aside the remaining 1,500 mt as bycatch to support other anticipated groundfish fisheries. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620.

Maximum retainable bycatch amounts for applicable gear types may be found at § 679.20(e).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866..

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–24511 Filed 9–19–96; 5:04 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 187
Wednesday, September 25, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Parts 404 and 407

Seaway Regulations and Rules: Great Lakes Pilotage Rates

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking and hearing.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) is proposing to amend the Great Lakes Pilotage Regulations by increasing Great Lakes Pilotage Rates by: 6% in Area 1; 20% in Area 2; 7% in Area 4; 35% in Area 5; 11% in Area 6; 44% in Area 7; 12% in Area 8; and 17% for mutual rates.

The proposed pilotage rate adjustments are different in each area because the rates have not been set on an area-by-area basis since 1967. In the interim years pilotage rates were increased by a single percentage across areas and this led to disparities between areas and between districts. The rates proposed above were calculated by applying the same formulas uniformly to each area.

The increase in Great Lakes pilotage rates is necessary because pilot compensation has fallen below established compensation targets. In accordance with Step 2 of Appendix A to 33 CFR part 407, the compensation target for pilots providing service in the designated waters of the Great Lakes is the approximate average annual compensation for masters on U.S. Great Lakes vessels and the compensation target for pilots providing service in the undesignated waters of the Great Lakes is the approximate average annual compensation for first mates on U.S. Great Lakes vessels. In accordance with 33 CFR 407.1(b), pilotage rates have been reviewed and it has been determined that pilots are not meeting these targets. Therefore, in accordance with 46 U.S.C. 9303(f) the SLSDC is proposing to increase pilotage rates to meet these targets. The SLSDC requests comments on these proposed amendments and intends to conduct a public hearing. The purpose of this hearing is to gather information relating to this rulemaking and to permit responses by interested persons to material filed in this docket.

DATES: Any party wishing to present views on the proposed amendments may file comments with the SLSDC on or before November 12, 1996.

The SLSDC intends to conduct a public hearing on October 22, 1996, which will begin at 10 a.m. and last until all comments have been heard, or until 3 p.m.

ADDRESSES: Send comments to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Suite 5424, Washington, DC 20590.

The hearing will be held at the Crowne Plaza at Detroit Metro Airport, 8000 Merriman Road, Romulus, MI.

FOR FURTHER INFORMATION CONTACT: Scott A. Poyer, Chief Economist, Saint Lawrence Seaway Development Corporation, Office of Great Lakes Pilotage, United States Department of Transportation, 400 7th Street SW., Suite 5424, Washington, DC 20590, room 5421, 1–800–785–2779, or Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Suite 5424, Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1995, the Secretary of Transportation transferred responsibility for administration of the Great Lakes Pilotage Act from the Commandant of the U.S. Coast Guard to the Administrator of the SLSDC. This transfer was effected by a final rule published by the U.S. Department of Transportation (DOT) in the Federal Register on December 11, 1995 (60 FR 63444). Among the responsibilities transferred by this final rule was the responsibility for setting Great Lakes pilotage rates. On May 9, 1996, the DOT published a final rule in the Federal Register (61 FR 21081), which was originated and initially drafted when Great Lakes pilotage functions were administered by the U.S. Coast Guard. The final rule made the Department's final changes to the methodology used to set Great Lakes pilotage rates.

This rulemaking represents the first time the new methodology is being used to set Great Lakes pilotage rates. This rulemaking proposes the first full rate review since 1987, and the first rate adjustment since 1992. The magnitude of the rate adjustments proposed by this rulemaking are due to the nine-year interval since the last full ratemaking review. The new ratemaking methodology requires that pilotage rates be reviewed at least once a year. This yearly review is considered an improvement that will, over time, serve to avoid fluctuations in pilot compensation and avoid large changes in pilotage rates.

This rulemaking follows the methodology detailed in 33 CFR Part 407 and in particular the step-by-step ratemaking calculations contained in Appendix A to Part 407. These step-by-step calculations for each pilotage area are summarized in the following tables and explained in more detail afterwards:

TABLE A

	Area 1, St. Lawrence River	Area 2, Lake Ontario	Total, district 1
Step 1: Projection of operating expenses	$215,313	$155,916	$371,229
Step 2: Projection of target pilot compensation	$969,052	$461,450	$1,430,502
Step 3: Projection of revenue	$1,129,235	$522,059	$1,651,294
Step 4: Calculation of investment base	$135,076	$97,814	$232,890
Step 5: Determination of target rate of return on investment	7.72%	7.72%	7.72%

TABLE A—Continued

	Area 1, St. Lawrence River	Area 2, Lake Ontario	Total, district 1
Step 6: Adjustment determination	$1,194,793	$624,918	$1,819,711
Step 7: Adjustment of pilotage rates	1.06	1.20	1.10

TABLE B

	Area 4, Lake Erie	Area 5, South East Shoal to Port Huron, MI	Total, district 2
Step 1: Projection of operating expenses	$355,562	$580,127	$935,689
Step 2: Projection of target pilot compensation	$461,450	$1,107,488	$1,568,938
Step 3: Projection of revenue	$776,886	$1,267,552	$2,044,438
Step 4: Calculation of investment base	$100,885	$164,603	$265,488
Step 5: Determination of target rate of return on investment	7.72%	7.72%	7.72%
Step 6: Adjustment determination	$828,600	$1,706,522	$2,535,122
Step 7: Adjustment of pilotage rates	1.07	1.35	1.24

TABLE C

	Area 6, Lakes Huron and Michigan	Area 7, St. Mary's River	Area 8, Lake Superior	Total, district 3
Step 1: Projection of operating expenses	$499,286	$103,027	$198,130	$800,443
Step 2: Projection of target pilot compensation	$922,900	$276,872	$369,160	$1,568,932
Step 3: Projection of revenue	$1,284,531	$265,062	$509,735	$2,059,328
Step 4: Calculation of investment base	$75,488	$15,577	$29,956	$121,021
Step 5: Determination of target rate of return on investment	7.72%	7.72%	7.72%	7.72%
Step 6: Adjustment determination	$1,428,014	$381,102	$569,602	$2,378,718
Step 7: Adjustment of pilotage rates	1.11	1.44	1.12	1.16

As summarized in the tables A, B and C above, the SLSDC proposes to amend the pilotage rates found in 33 CFR 404.405–404.410 by increasing basic pilotage rates by: 6% in Area 1; 20% in Area 2; 7% in Area 4; 35% in Area 5; 11% in Area 6; 44% in Area 7; and 12% in Area 8. For the pilotage rates in 33 CFR 404.420, 404.425 and 404.428, which are paid in all pilotage areas, the SLSDC proposes to increase these rates by 17% which is the aggregate increase for pilotage rates in all areas.

The calculations summarized in the tables A, B and C above follow the step-by-step instructions in 33 CFR Part 407 Appendix A. A more detailed explanation of the calculations in each step is as follows:

Step 1: Projection of Operation Expenses

Step 1.A.—Submission of Financial Information

The first step in determining the amount of operating expenses that will be allowed in pilotage rates is to gather financial data from each of the three Great Lakes pilot associations (the Associations). For 1995, the Associations each obtained an audit by an independent Certified Public Accountant and submitted these audits to the Director of the Great Lakes Pilotage (the Director), in accordance with 33 CFR § 406.300.

Step 1.B.—Determination of Recognizable Expenses

To aid the Director in determining which expenses reported by the Associations will be recognized for ratemaking purposes, the Director hired an independent Certified Public Accounting (CPA) firm to review the expenses reported by the Associations using the guidelines contained in 33 CFR 407.05. The results of the audits and the Director's determinations are as follows:

	District 1	District 2	District 3
Total reported expenses	$264,790	$1,118,862	$868,731
Proposed adjustments (independent CPA firm)	34,490	(321,774)	(8,750)
Director's adjustments	16,000	110,819	36,797
Total recognized expenses	315,280	907,907	896,778

The reports of the independent CPA firm details its proposed expense adjustments. The following is a summary of the major findings and proposed adjustments, along with the Director's corresponding adjustments where appropriate.

Adjustments made to the reported expenses can be divided into six categories: (1) equalization between Associations; (2) recordkeeping deficiencies; (3) reimbursed expenses; (4) expenses not necessary for the provision of pilotage services; (5) expenses related to lobbying; and (6)

expenses which do not conform to Internal Revenue Service guidelines.

Equalization between Associations is necessary because each Association is organized differently. The District 1 and 3 Associations are organized as associations/partnerships, whereas the District 2 Association is organized as a corporation. Because of this difference, the District 2 Association pays for Social Security taxes, Medicare taxes, insurance and travel expenses out of corporate funds while in the District 1 and 3 Associations these expenses are paid directly by the pilots themselves. Since these taxes, insurance and travel expenses are legitimate business expenses that should be recognized for ratemaking purposes, funds for these expenses have been added to the expense base for Districts 1 and 3 ($103,519 for District 1 and $203,986 for District 3).

Recordkeeping deficiencies were reported by the independent CPA firm for the District 2 and District 3 Associations. In District 2 contemporaneous logs were not kept for automobile expenses or credit card/ travel expenses, while in District 3 contemporaneous logs were not kept for automobile expenses. Because of these recordkeeping deficiencies, the independent CPA firm recommended disallowing $59,867 from District 2 and $20,797 from District 3. The Director agrees that undocumented expenses should not be allowed for ratemaking purposes. However, since these recordkeeping practices were allowed in the past and there is no question that these types of expenses are necessary for the provision of pilotage services, the Director has reinstated these expenses into the rate base with the provision that each Association will address these discrepancies before the next full rate review. The Director is basing this decision on Step 1(1) of Appendix A to Part 407 which states that ''the Director forecasts the amount of fair and reasonable operating expenses that pilotage rates should recover.'' The Director believes it is fair and reasonable to give the Associations an opportunity to correct recordkeeping deficiencies discovered during audits. And in reply to the audit findings, each Association is taking steps to correct perceived recordkeeping deficiencies that were discovered by the independent CPA firm.

With regard to reimbursed expenses, the independent CPA firm found that some expenses for each Association are reimbursed by various parties and recommended that these expenses not be counted in the expense base for each Association. Examples of these expenses include reimbursement from one Association to another for shared pilot boat and dispatch, reimbursement from ships for tug boat use and reimbursement from Canadian pilotage operations for shared administrative expenses. These are legitimate business expenses but they are paid by other Associations or other parties, not by basic pilotage rates, and should therefore not be used in the calculation of pilotage rates for the Association being reimbursed. The independent CPA firm recommended $32,746 be deducted from District 1, $192,825 be deducted from District 2 and $112,812 be deducted from District 3. The Director agrees with the independent CPA firm's findings and these funds have been deducted from the rate base, except for $34,952 which the Director has added back into the expense base for District 2 because the independent CPA firm counted three years of Workers Compensation refunds instead of counting only one year's refund. This inadvertent miscalculation is corrected by the Director's addition of the $34,952.

Expenses that were not necessary for the provision of pilotage service are disallowed for ratemaking purposes. Under 33 CFR 407.5(a)(1) of the Great Lakes Pilotage Ratemaking regulations, ''[e]ach expense item included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service'' and ''expense items that the Director determines are not reasonable and necessary for the provision of pilotage services will not be recognized for ratemaking purposes.'' The largest portion of expenses that the independent CPA firm believes fit in this category are costs resulting from the legal challenge by two Associations to the transfer of Great Lakes Pilotage oversight functions by the Secretary of Transportation from the Commandant of the Coast Guard to the Administrator of the SLSDC, together with the funding and staff. The transfer did not affect the substantive rules regarding the provision of pilotage services. These litigation costs are distinguishable from expenses that are directly related to the provision of those services, such as the cost of transportation to and from vessels or the labor of the pilots, from which the public derives a direct benefit. The latter are costs that, if they were not incurred, would affect the level of service to the public, while the former are not. Additionally, some legal expenses which are directly related to the provision of pilot services are allowed, such as the expense of defending a suit by an applicant pilot discharged from the training program for cause, which directly affects the quality of service and safety. While it is reasonable to expect the public to share the burden of the costs of services provided that have been incurred by the Associations by passing those costs through the pilotage rate charged, it is not reasonable to pass on the costs of litigation over an issue that has no discernable, direct effect on the actual provision of pilotage services to that public. These costs therefore are being disallowed for the purposes of establishing the rate base ($34,411 in District 1, $465 in District 2 and $74,733 in District 3).

In addition to the costs associated with the litigation over redelegation of pilotage functions, the independent CPA firm also recommended an additional $60,585 be deducted from District 2 and $866 be deducted from District 3 for expenses that were not necessary or reasonable for the provision of pilotage service. Included in these expenses are overcharges for leases, charitable contributions, donations, uniforms and expenses for business promotion, none of which are necessary for the provision of pilotage service by a government regulated monopoly. The Director agrees with these findings and these expenses have been deducted from the rate base.

The independent CPA firm recommended that $1,872 be deducted from District 1, $3,456 be deducted from District 2, and $3,528 be deducted from District 3 for that portion of dues which go toward lobbying expenses. The Director has deducted these expenses from the rate base in accordance with 33 CFR 407.5(a)(8)(ii).

The independent CPA firm recommended that $4,576 be deducted from District 2 for per diem expenses that were in excess of IRS per diem guidelines, as per 33 CFR 407.5(a)(2)(iii). The Director agrees with these findings and the corresponding expenses have been deducted from the rate base.

During the Seaway Safety Summit held on August 6, 1996, each Association requested that the Director add funds to each Association's expense base for the purpose of purchasing portable Electronic Chart Display Information Systems (ECDIS). This equipment uses the Differential Global Positioning Satellite (DGPS) system to help mariners locate their exact positions. ECDIS/DGPS systems are being used by other pilot associations in the United States. The Director reviewed the request and is allowing

$16,000 per Association for the purchase, test and evaluation of two portable ECDIS/DGPS system per Association.

During the audit of Association expenses, each Association requested expenses be allowed in advance for items that they had not yet purchased. Examples of these items include funding for applicant trainees, continuing education, establishment of a capital improvement/replacement account, and purchase of a new pilot boat in District 1. All of these items may be considered in future ratemakings. At this time, however, there has been no agreement between the Director and the Associations on whether or how much to fund these items, therefore it would be premature to include funds for these items in this rulemaking.

Step 1.C.—Adjustment for Inflation or Deflation

The total recognized expenses for each Association were increased by 3.06% to adjust Association expenses for inflation. The 3.06% adjustment is based on the 1995 change in the consumer price index (CPI) for the North Central region of the United States. This measure of inflation is in wide usage throughout the United States and is a generally accepted method for adjusting for inflation. Appendix A, Step 1.C., details another measure which consists of creating a separate inflation index for each Association. It is proposed that Step 1.C. be amended to discontinue this alternative measure for three reasons. First, there is no reason to believe that the inflation experienced by Great Lakes pilots is any different from that experienced by everyone else in that area of the United States. Second, the creation of a separate index for each Association is counterproductive to the goal of treating each Association equally. Third, in order to implement this alternative measure the 1995 independent CPA firm audits would have to be compared to 1994 independent CPA firm audits. There are no 1994 independent CPA firm audits because this is the first time this rate methodology has been implemented and the first time the independent CPA firm was hired was for the 1995 audits. Completion of 1994 independent CPA firm audits would lead to a substantial delay in this rulemaking. Given the ready availability of an acceptable measure of inflation, it would not be fair and reasonable to delay the ratemaking over this limited issue. Therefore, the same inflation index (3.06%) was applied to each Association.

Step 1.D.—Projection of Operating Expenses

The final step in determining what Association operating expenses are included in rate calculations consists of projecting Association expenses forward to the rate period and apportioning District-wide expenses to each area within that District. In this way the pilotage charges in each area will more accurately reflect the expected cost of service in that area. A description of the pilotage areas is found in 33 CFR 407.10(b). For this rulemaking, Association expenses were adjusted by multiplying the pilotage hour projection for each district, as determined in step 2.B., below, by the aggregate percentage of Association expenses that change in response to a change in pilotage hours. Analysis indicates about 57% of Association expenses are affected by a change in pilotage hours. For instance, in District 1 pilotage hours are projected to increase 25% (see Step 2.B.), which is multiplied by 57% to project that District 1's operating expenses should increase 14% in response to the projected increase in pilotage hours. Then, District-wide expenses were apportioned to each area according to the number of pilots in that area, as determined in Step 2.B., below. For instance, District 1 is calculated to need seven pilots in Area One and five pilots in Area Two, therefore Area One was assigned 58% of the expenses for the District and Area Two was assigned 42% of the expenses for the District. The resultant Projection of Operating Expenses are displayed in the first row of Tables A, B and C, above.

Step 2: Projection of Target Pilot Compensation

Step 2.A.—Determination of Target Rate of Compensation

For pilots providing service in undesignated waters the target rate of compensation is equal to the yearly compensation earned by first mates on U.S. Great Lakes vessels. Information from the American Maritime Officers Union and Great Lakes Ship Operating Companies indicates that this current rate is $92,290, which covers all wages and compensation received including: work days; vacation pay; weekend pay; holiday pay; bonus; clerical pay; medical benefits; and pension contribution. For pilots providing service in Designated Waters the target rate of compensation is 1.5 times first mate compensation, which is calculated to be $138,435.

Step 2.B.—Determination of Number of Pilots Needed

The number of pilots needed is determined by dividing the projected bridge hours for each area by the work hour targets for each area, *i.e.,* 1,000 hours in designated waters and 1,800 hours in undesignated waters. Pilot Bridge hours are projected based on the vessel traffic that those pilots are expected to serve. The detailed 1996 vessel traffic and bridge hour projections are in the docket and are available for inspection. In summary, the SLSDC used four sources to project vessel traffic and bridge hours. These sources were industry survey results, commodity prices, mathematical modeling and current bridge hour levels. The projections for 1996 are for a 25% increase in bridge hours in District 1, no change in District 2 and a 25% decrease in District 3. The major differences in the predicted traffic in each District is due to the effects of the current grain shortage. Grain becomes a bigger proportion of cargoes as one travels west on the Great Lakes. Grain supplies this year have been lower than in past years due to bad weather. Applying this analysis to pilot bridge hours, it is projected that in 1996, Area 1 will require the equivalent of 7 pilots, Area 2 will require the equivalent of 5 pilots, Area 4 will require the equivalent of 5 pilots, Area 5 will require the equivalent of 8 pilots, Area 6 will require the equivalent of 8 pilots, Area 7 will require the equivalent of 2 pilots and Area 8 will require the equivalent of 4 pilots. The term ''equivalent'' is used because the actual assignment of pilots to each area varies according to the needs of vessel traffic.

The Director proposes the equivalent of 10 pilots for Area 6 to cushion the effect of this year's rapid decrease in bridge hours in that area. As of June 30, 1996, pilot bridge hours were 42.80% lower in District 3 compared with the same period last year, with Area 6 losing the most pilots as a result. Decreases in traffic should lead to decreases in pilot numbers. However, this year's extraordinary decrease is believed to be related to the shortage of grain cargoes at the beginning of 1996. This problem is not expected to continue into next year, so reducing the number of pilots rapidly this year would lead to a shortage of pilots next year. That is why the Director believes it is prudent to allow for 10 pilots in Area 6.

Step 2.C.—Projection of Target Pilot Compensation

Multiplying the target compensation for each area by the number of pilots in each area, the target pilot compensation for each area is determined and displayed in Tables A, B and C, above.

Step 3: Projection of Revenue

Step 3.A.—Projection of Revenue

Pilotage Revenue was projected by multiplying the revenue earned by each Association in 1995 by the change in traffic projected for each Association. The result for each District was divided among the pilotage areas based on the number of pilots in each area.

Step 4: Calculation of Investment Base

The Investment Base was calculated for each Association during the analysis performed by the independent CPA firm hired by the Director. The results of those calculations are contained in the reports of the CPA firm, which are in the docket. The Investment Base for each Association was calculated to be: $232,890 in District 1; $265,488 in District 2; and $119,823 in District 3. The District 1 and 2 Associations also had affiliated/related companies and the Investment Base for these companies was also calculated, but it was not used in the ratemaking because it was found that both of these companies were profitable and were already earning a return on investment which was within the range of reasonableness. If the Investment Base from these companies were also counted in the calculation of pilotage rates, this would result in an unfair double-counting of assets for return purposes.

Step 5: Determination of Target Rate of Return on Investment

The rate of return on investment (ROI) for 1996 was set at 7.72%. This is the 1995 average annual rate for new issues of high grade corporate securities as determined by the Market Finance Division of the Department of Treasury. Section (2) of Appendix A to 33 CFR Part 407 indicates that the rate of return will be calculated based on ''the most recent return on stockholder's equity for a representative cross section of transportation industry companies.'' At the time the Great Lakes Pilotage Ratemaking Methodology was written, this data was available from the U.S. Bureau of Economic Analysis (BEA). However, due to downsizing and restructuring of the Federal Government, the BEA no longer keeps this information. Therefore, the SLSDC proposes to amend Section (2) of Appendix A to set the rate of return equal to the previous year's average annual rate of return for new issues of high grade corporate securities.

Step 6: Adjustment Determination

The adjustment determination is made using the numbers listed above and following the formula found in Step 6 of Appendix A to 33 CFR Part 407. The results of this formula are found in Tables A, B and C listed above.

Step 7: Adjustment of Pilotage Rates

The adjustments to pilotage rates in each area are determined by multiplying the current pilotage rates in those areas by the rate multiplier. The rate multiplier is calculated by dividing the revenue needed (from step 6) by the projected revenue (from step 3) for each area. The results are listed in Tables A, B and C above. The SLSDC proposes to amend the pilotage rates in 33 CFR 404.405–410 with the rates obtained by multiplying the current pilotage rates times the rate multiplier calculated for each pilotage area.

The SLSDC also proposes to change the format for how pilotage rates are presented. Instead of the current format which describes basic pilotage fees in a paragraph format in 33 CFR 404.405 and 404.410, the SLSDC proposes to list pilotage fees in three easier to-read, point-to-point tables which will become §§ 404.405, 404.407 and 404.410, respectively. This format has the advantages of being more complete and less confusing than the old format. Pilotage charges are grouped by geographic area in roughly east-to-west order rather than by Designated Waters and Undesignated Waters. Also, pilotage charges which had to be inferred under the old format are specifically listed in the new format, such as the charge from Detour to Sault St. Marie, Michigan. The proposed format and charges are presented below in 33 CFR 404.405, 404.407 and 404.410.

The SLSDC also proposes to amend 33 CFR 404.400(a) and 404.405 by adding a metric equivalent to the current rates which list measurements in feet and miles. This addition is made to make pilotage rates easier to understand for the international community.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore, Executive Order 12866 does not apply. The Great Lakes Pilotage Act (46 U.S.C. 9305) provides for agreements with the appropriate agency of Canada to prescribe joint or identical pilotage rates and charges. The Secretary of Transportation and the Minister of Transport of Canada have signed a Memorandum of Agreement concerning Great Lakes Pilotage dated January 18, 1977, section 7 of which provides for the establishment of identical rates, charges and any other conditions or terms of service of pilots in the waters of the Great Lakes.

This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is considered to be substantive but nonsignificant under those procedures. All previous pilotage rate rulemakings have been considered nonsignificant except for the interim pilotage rate adjustment of June 5, 1992, (57 FR 23955). This interim adjustment was necessary because a new rate methodology was being designed and was significant because the interim rate adjustment was put in before the methodology was completed. The rate methodology has now been completed and 33 CFR § 407.1(b) requires that pilotage rates be reviewed annually.

The economic impact of this rulemaking is expected to be minimal so that a full economic evaluation is not warranted. Fees for Great Lakes registered pilotage service are paid almost exclusively by foreign vessels. Therefore, the effect of the proposed increase in Great Lakes pilotage rates will be borne almost exclusively by foreign vessels operators, not U.S. entities.

Regulatory Flexibility Act Determination

The SLSDC certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. As discussed above under ''Regulatory Evaluation,'' the SLSDC expects the impact of this proposed rule to be minimal. Also, since the vast majority of pilotage fees are paid by foreign vessels, any resulting costs will be borne almost exclusively by foreign vessel operators.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this proposal under the principles and

criteria in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Parts 404 and 407

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For reasons set out in the preamble, the SLSDC proposes to amend Part 404 and 407 of Title 33 of the Code of Federal Regulations as follows:

PART 404—[AMENDED]

1. The authority citation for part 404 continues to read as follows:

Authority: 46 U.S.C. 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.52. 33 CFR 404.105 also is issued under the authority of 44 U.S.C. 3507.

2. Section 404.400(a) is revised to read as follows:

§ 404.400 Calculation of pilotage units and determination of weighing factors.

* * * * *

(a) Pilotage unit computation:

Pilot Unit=(Length×Breadth×Depth)/ 283.17 (measured in meters)

Pilot Unit=(Length×Breadth×Depth)/ 10,000 (measured in feet)

* * * * *

3. Section 404.405 is revised to read as follows:

§ 404.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

Except as provided in § 404.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots in the St. Lawrence River and Lake Ontario:

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic pilotage	$7.74 [1] per kilometer or $12.47 [1] per mile.
Each lock transited	$166.[1]
Harbor movage	$547.[1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $364 and the maximum basic rate for a through trip is $1,597.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-hour period	$332
Docking/undocking	$317

4. Section 404.407 is added to read as follows:

§ 404.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

Except as provided in § 404.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI:

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six Hour Period	$345	$345
Docking/Undocking	$265	$265
Any Point on the Niagara River below the Black Rock Lock	N/A	$677

(b) Area 5 (Designated Waters):

Any point on/in	Southeast Shoal	Toledo or any port on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$1,018	$601	$1,322	$1,018	N/A
Port Huron Change Point	[1] 1,773	[1] 2,053	1,332	1,035	737
St. Clair River	[1] 1,773	N/A	1,332	1,332	601
Detroit or Windsor or the Detroit River	1,018	1,322	601	N/A	1,332
Detroit Pilot Boat	737	1,018	N/A	N/A	1,332

[1] When pilots are not changed at the Detroit Pilot Boat.

5. Section 404.410 is revised to read as follows:

§ 404.410 Basic rates and charges on Lakes Huron, Michigan and Superior and the St. Mary's River.

Except as provided in § 404.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots on Lakes Huron, Michigan and Superior and the St. Mary's River:

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-hour period	$279
Docking/undocking	$265

(b) Area 7 (Designated Waters):

Area	Detour	Gros Cap	Any Harbor
Gros Cap	$1,788	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	$1,788	$674	N/A
Any point in Sault Ste. Marie, Ontario except the Algoma Steel Corporation Wharf	$1,500	$674	N/A
Sault Ste. Marie, Michigan	$1,500	$674	N/A

Area	Detour	Gros Cap	Any Harbor
Harbor Movage	N/A	N/A	$674

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six Hour Period	$281
Docking/Undocking	$268

6. Section 404.420 is revised to read as follows:

§ 404.420 Cancellation, delay or interruption in rendition of services.

(a) Except as provided in this section, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of $54 for each hour or part of an hour during which each interruption or detention lasts with a maximum basic rate of $851 for each continuous 24 hour period during which the interruption or detention continues. There is no charge for an interruption or detention caused by ice, weather or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge may be made for an interruption or detention if the total interruption or detention ends during the 6 hour period for which a charge has been made under §§ 404.405–404.410.

(b) When the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of $54 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of $851 for each continuous 24 hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of $322;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of $54 for each hour or part of an hour including the first hour, with a maximum basic rate of $851 for each 24 hour period.

§ 404.425 [Amended]

7. Section 404.425 is amended by replacing the term ''§§ 404.405, 404.410, and 404.420'' with the term ''§§ 404.405, 404.407, 404.410 and 404.420''.

8. Section 404.428 is revised to read as follows:

§ 404.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point, the ship shall pay at the rate of $329 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for these services. The change points to which this section applies are designated in § 404.450.

PART 407—[AMENDED]

9. The authority citation for Part 407 continues to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.52.

10. Appendix A to Part 407, Step 1.C. and Step 5(2) are revised to read as follows:

Appendix A to Part 407—Ratemaking Analyses and Methodology

* * * * *

Step 1.C.—Adjustment for Inflation or Deflation

(1) In making projections of future expenses, expenses that are subject to inflationary or deflationary pressures are adjusted. Costs not subject to inflation or deflation are not adjusted. Annual cost inflation or deflation rates will be projected to the succeeding navigation season, reflecting the gradual increase or decrease in costs throughout the year. The inflation adjustment will be based on the preceding year's change in the Consumer Price Index for the North Central Region of the United States.

* * * * *

Step 5: * * *

(2) The allowed Return on Investment (ROI) is based on the preceding year's average annual rate of return for new issues of high grade corporate securities.

* * * * *

Issued at Washington, D.C. on September 17, 1996.

Saint Lawrence Seaway Development Corporation.

Gail C. McDonald,

Administrator.

[FR Doc. 96–24489 Filed 9–24–96; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI00

Claims Based on Exposure to Ionizing Radiation (Prostate Cancer and Any Other Cancer)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations concerning compensation for diseases claimed to be the result of exposure to ionizing radiation. This would implement a decision by the Secretary of Veterans Affairs that based on all evidence currently available to him prostate cancer and any other cancers are ''radiogenic diseases.'' The intended affect of this action is to add these conditions to the list of radiogenic diseases for service-connected compensation purposes.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154 Washington, DC 20420. Comments should indicate that they are in response to ''RIN 2900–AI00.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Program Management Staff, Compensation and Pension Service, Veterans Benefits

Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7213.

SUPPLEMENTARY INFORMATION: The Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. 98–542, required VA to develop regulations establishing standards and criteria for adjudicating veterans' claims for service-connected compensation for diseases claimed to be the result of exposure to ionizing radiation. In response to that requirement, VA has defined the term ''radiogenic disease'' to mean a disease that may be induced by ionizing radiation and established a list of diseases that satisfy that definition at 38 CFR 3.311(b)(2). That list is not an exclusive list, however, and since 1985 VA has added a number of conditions to it.

When the Secretary determines that a significant statistical association exists between exposure to ionizing radiation and any disease under the standards established at 38 CFR 1.17, VA adds that disease to the list of radiogenic diseases found at 38 CFR 3.311(b)(2). Before making such a determination, the Secretary receives the advice of the Veterans Advisory Committee on Environmental Hazards (VACEH) based on its evaluation of scientific and medical studies.

On April 25–26, 1995, the VACEH held a public meeting in Washington, DC, and reviewed 53 medical and scientific studies having to do with radiation exposure and subsequent development of disease. Based upon its assessment of those studies and the scientific literature that it had previously reviewed and deemed to be valid, the VACEH concluded that it would be appropriate to consider prostate cancer as being associated with radiation exposure for purposes of VA's compensation system. Based on that recommendation, the Secretary has preliminarily determined that an association exists between radiation exposure and prostate cancer.

In response to a request from the Under Secretary for Benefits, the VACEH addressed the question of the radiogenicity of cancer generally. The VACEH concluded that, on the basis of current scientific knowledge, exposure to ionizing radiation can be a contributing factor in the development of any malignancy. The degree to which radiation exposure is a factor varies depending on the type of malignancy, the amount, rate and type of radiation exposure, and other relevant risk factors such as age at the time of exposure. After reviewing this recommendation, the Secretary has preliminarily determined that an association exists between radiation exposure and any other cancer not listed at 38 CFR 3.311(b)(2).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

(The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: June 4, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.311, paragraph (b)(2)(xxi) is amended by removing ''and''; and paragraph (b)(2)(xxii) is amended by removing ''.'' and adding, in its place, ''; ''; and new paragraphs (b)(2)(xxiii) and (b)(2)(xxiv) are added to read as follows:

§ 3.311 Claims based on exposure to ionizing radiation.

* * * * *

(b) * * *

(2) * * *

(xxiii) Prostate cancer; and

(xxiv) Any other cancer.

* * * * *

[FR Doc. 96–24521 Filed 9–24–96; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 94–06]

Financial Responsibility Requirements for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Further Notice of Proposed Rulemaking; Extension of time to Comment.

SUMMARY: The proposed rule in this proceeding (61 FR 33059, June 26, 1996) would, *inter alia,* remove the current $15 million coverage ceiling for nonperformance of transportation by passenger vessel operators, and replace the ceiling with sliding-scale coverage requirements keyed to passenger vessel operators' financial rating length of operation in United States trades and satisfactory explanation of claims for nonperformance of transportation. Sixty days originally was provided for comment and a 30-day extension subsequently was granted. The Maritime Administration now requests an additional 30 days for comment. Upon consideration of this request a further extension is granted but, in view of the total amount of time already provided for comment, the extension is limited to 20 days.

DATES: Comments due on or before October 15, 1996.

ADDRESSES: Send comments (original and fifteen copies) to: [1] Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol, St., NW, Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs Certification and Licensing, Federal Maritime Commission, 800 North Capitol, St., NW, Washington, D.C. 20573–0001, (202) 523–5796.

Joseph C. Polking,

Secretary.

[FR Doc. 96–24477 Filed 9–24–96; 8:45 am]

BILLING CODE 6730–01–M

[1] The Commission also requests, but does not require, that commenters submit an electronic copy of their comments in ASCII, WordPerfect or Microsoft Word format.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 43 and 64

[CC Docket No. 96–193; FCC 96–370]

Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: On September 3, 1996, the Commission adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on regulatory proposals affecting carrier classifications and reporting requirements. The intended effect of this proceeding is to establish regulatory reform which is consistent with the goals of the Telecommunications Act of 1996. In particular, we initiate a rulemaking to consider whether we should modify or eliminate the 60-day advance notice requirement for revisions to cost allocation manuals when a LEC enters a new business venture or makes changes to an existing business venture; which inflation measure we should incorporate into our rules pertaining to carrier classifications and reporting requirements; and whether to modify the filing requirements for ARMIS reports and the reports required to be filed in interstate exchange carriers and AT&T.

DATES: Comments on the proposed rulemaking must be submitted on or before October 15, 1996. Reply comments are due on or before November 5, 1996. Written comments by the public on the proposed and/or modified information collections are due on or before October 15, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before November 25, 1996.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Accounting and Audits Division, Common Carrier Bureau at 202–418–0850. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted September 3, 1996 and released September 12, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcript Service (202) 857–3800, 1919 M St., NW., Suite 246, Washington, DC 20554.

Paperwork Reduction Act

This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0470.

Title: Computer III Remand Proceeding: Bell Operating Company Safeguards, and Tier 1 Local Exchange Company Safeguards.

Form No.: N/A.

Type of Review: Revision of Existing Collection.

Number of Respondents: 18.

Estimated Time Per Response: 300 hours.

Total Annual Burden: 10,800.

Estimated costs per respondent: $0.

Needs and Uses: In the attached NPRM the FCC seeks comment on whether or not it should continue to require carriers to file CAM changes relating to the cost apportionment table or changes in time reporting procedures 60 days before implementation. This requirement could cause carriers to file CAM changes more frequently than annually. In addition, the FCC seeks comment on the appropriate index to use to adjust the classification and reporting thresholds for inflation.

Regulatory Flexibility Analysis: Section 603 of the Regulatory Flexibility Act (RFA), as amended, requires an Initial Regulatory Flexibility Analysis in notice and comment rulemaking proceedings, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.'' This proceeding concerns the method for making inflation adjustments to the annual revenue threshold that determines which carriers must file ARMIS reports and cost allocation manuals. In addition, the NPRM seeks comment on whether the Commission should retain the 60-day notice requirement for revisions to cost allocation manuals when a LEC enters into a new business venture or makes changes to an existing business venture. Finally, the NPRM proposes several changes to the filing requirements for ARMIS reports, and the reports required to be filed by interstate exchange carriers (IXCs) under Section 43.22(b) and AT&T under Section 43.21(b) of our rules. We do not believe the rules proposed in the NPRM portion of this proceeding will have a significant economic impact on a significant number of small entities because the businesses affected by our proposed rules are not small entities within the meaning of the RFA and also because our proposals will not have a significant economic impact on these businesses.

2. The RFA defines the term ''small entity'' as having the same meaning as ''small business concern'' under the Small Business Act (SBA), which defines small business concern as ''one which is independently owned and operated and which is not dominant in its field of operation * * *'' Section 121.201 of the Small Business Administration regulations defines small telecommunications entities in SIC Code 4813 (Telephone Communications, Except Radiotelephone) as any entity with fewer than 1,500 employees at the holding company level.

3. Our proposed rules concerning the filing requirements for cost allocation manuals and for adjusting for inflation references to carrier revenues apply to the Bell Operating Companies and other incumbent LECs, which, because they are dominant in their field of operations, are by definition not small entities under the RFA. These proposed rules would also affect filing requirements for new LECs entering the local exchange market under the competitive provisions of the 1996 Act to the extent that such carriers' revenues exceed the annual indexed revenue threshold of $100 million in operating revenue as adjusted upward by the rules adopted and proposed herein. While these companies may have fewer than 1,500 employees and thus fall within the SBA's definition of small telecommunications entity, we do not believe that such entities should be considered small entities within the meaning of the RFA.

4. Similarly, our proposal to change the IXC report required by Section 43.22(b) of the Commission's rules affects only designated IXCs with annual operating revenues above $100 million dollars. In addition, we propose to eliminate the report required by Section 43.21(b) of our rules that presently is filed only by AT&T. While IXCs may have fewer than 1,500 employees and thus fall within the SBA's definition of small telecommunications entity, we do not believe that such entities should be considered small entities within the meaning of the RFA.

5. Moreover, none of the proposed requirements contained in our NPRM will have a significant economic impact on the LECs or IXCs who are required to file these reports or manuals. The number of filings required would be reduced by our proposed rules, and raising revenue thresholds may allow certain carriers to avoid filing the reports or manuals. This should have a beneficial impact on carriers affected by the proposed rules.

6. We therefore certify, pursuant to Section 605(b) of the RFA, that the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. We seek comment on this tentative conclusion. The Secretary shall send a copy of this Notice, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to Sections 402(b)(2)(B) and 402(c) of the Telecommunications Act of 1996, Public Law No. 104–104, sec. 402(b)(2)(B) and 402(c), and Sections 1, 4, 201–205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(a), 154, 201–205, 215, 218 and 220, and Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), *notice is hereby given* of proposed amendments to Parts 32, 43 and 64 in accordance with the proposals, discussions, and statement of issues in this Notice of Proposed Rulemaking and that *comment is sought* regarding such proposals, discussion and statement of issues.

Accordingly, *it is ordered* that a rulemaking proceeding *is instituted* to determine whether proposals made herein concerning regulatory reform for carrier classifications and filing requirements would be in the public interest.

List of Subjects in 47 CFR Parts 32, 43 and 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 96–24474 Filed 9–24–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–80; RM–8758, RM–8833]

Radio Broadcasting Services; Alva, Bartlesville and Ponca City, OK, and Deerfield, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order to show cause.

SUMMARY: This document directs Mur-Thom Broadcasting, Inc., Ponca City, Oklahoma, to show cause why its license for Station KIXR should not be modified to specify operation on Channel 284A in lieu of Channel 261A. This action would allow Station KYFM, Bartlesville, Oklahoma, to upgrade its facility from Channel 260C3 to Channel 261C1. KYFM Radio, Inc., licensee of Station KYFM, Bartlesville, Oklahoma, filed a counterproposal in this proceeding requesting the substitution at Ponca City to accommodate its upgrade at Bartlesville. This *Order* does not afford additional opportunity either to comment on the merits of the conflicting proposal or for the acceptance of additional counterproposals because an opportunity has already been provided for the filing of such proposals.

DATES: Comments must be filed on or before November 4, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order to Show Cause,* MM Docket No. 96–80, adopted September 6, 1996, and released September 13, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–24472 Filed 9–24–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies Thomas Built Buses, Inc., petition to change the head protection zone requirements in FMVSS No. 222. Thomas stated in the petition that it felt that the head protection zones referenced in S5.3.1.1 were defined by NHTSA with a square school bus body in mind. Thomas requested that S5.3.1.1(c) be changed to allow for differences in design.

NHTSA is denying this petition. Thomas offered no justification for changing the standard other than that they perceived that the standard was developed with a square school bus body in mind. The history of FMVSS No. 222 clearly indicates that the head protection zones were established with the bus occupant's head in mind and not the bus body as Thomas believes. In fact the statement in S5.3.1.1 that ''The head protection zones in front of each school bus seat which are not occupied by the bus sidewall, window, or door structure * * *'' indicates that the standard specifically considered the possibility of non-square bus bodies. Changing the standard, as proposed in the Thomas petition, would allow manufacturers to install unpadded objects in locations where the bus occupant's head is likely to come in contact with them in a frontal collision.

FOR FURTHER INFORMATION CONTACT: Charles Hott, Office of Crashworthiness Standards, NPS–12, NHTSA, 400 7th Street, SW, Washington, DC 20590 (telephone 202–366–0247, Fax: 202–366–4329).

SUPPLEMENTARY INFORMATION: Thomas Built Buses, Inc., petitioned the agency to change the head protection zone requirements in FMVSS No. 222, S5.3.1.1. Thomas stated that it felt that the zones referenced in S5.3.1.1 were defined by NHTSA with a square school bus body in mind. Thomas also stated that its school bus body design has a 2.25 degree inward taper from the beltline of the bus upward to the point where the bus sidewall ends. Thomas stated that over the 28 inch span of head protection zone, the taper reduces the 3.25 inch dimension referenced in S5.3.1.1(c) to approximately 2.25 inches on the interior of the bus sidewall. Thomas requested that S5.3.1.1(c) be changed to allow for differences in design. Thomas stated that this change will not affect the impact testing required by S5.3.1.2 and it will still meet the intent of the standard. Thomas requested that the wording in S5.3.1.1(c) be changed to the following:

S5.3.1.1(c) A longitudinal plane 3.25 inches inboard of and parallel to the bus sidewall, window, or door structure.

FMVSS No 222; HEAD PROTECTION ZONE REQUIREMENTS: The head protection zone requirements are specified in S5.3.1 of the standard and are as follows:

S5.3.1 Head protection zone. Any contactable surface of the vehicle within any zone specified in S5.3.1.1 shall meet the requirements of S5.3.1.2 and S5.3.1.3. However, a surface area that has been contacted pursuant to an impact test need not meet further requirements contained in S5.3.

S5.3.1.1 The head protection zones in each vehicle are the spaces in front of each school bus passenger seat, which are not occupied by the bus sidewall, window, or door structure and which, in relation to that seat and its seating reference point, are enclosed by the following:

(a) Horizontal planes 12 inches and 40 inches above the seating reference point;

(b) A vertical longitudinal plane tangent to the inboard (aisle side) edge of the seat;

(c) A vertical longitudinal plane 3.25 inches inboard of the outboard edge of the seat, and

(d) Vertical transverse planes through and 30 inches forward of the reference point.

S5.3.1.2 specifies the head form requirement and

S5.3.1.3 specifies the head form force distribution requirement.

The history of rulemaking on FMVSS No. 222 shows that the head impact zone requirements of the standard go back to the original proposal published February 22, 1973. In that proposal the agency stated:

''To eliminate the exposed metal bars and similar designs and to make the seat itself a significant energy absorber, the NHTSA proposes to require all surfaces within a specified area ahead of the seat to meet a head impact criterion similar to the one included in Standard 208, occupant crash protection. * * * Most types of metal surface would be too hard and would therefore not meet the requirements of the proposed standard.''

In a subsequent proposal dated July 30, 1974, the agency stated the following:

''The proposal again specifies two zones in which impact by a head form or knee form must conform to specified force distribution and certain force or acceleration levels. The head protection zone is somewhat smaller than earlier proposed to accommodate tumble-home construction in side windows. * * *

These zones and many of the other requirements are based on location of the seating reference point, * * * The definition also specifies that the point have coordinates established relative to the designed vehicle structure, to permit the point to be located with certainty for enforcement purposes. * * * Because of the particular seat installation methods used in school buses, NHTSA would interpret ''designed vehicle structure'' to include the seat structure itself as mounted in the bus. The bus designer would therefore be able to specify the point coordinates from the seat structure alone.''

In yet another subsequent proposal dated October 8, 1975, the agency stated the following:

''The NHTSA has carefully calculated its impact requirements to reflect the fact that a crash from any direction can cause the occupant to impact any part of the adjacent seats or protruding objects from any direction.''

Standard No. 222 defines contactable surface as follows:

Contactable Surface is defined as any surface within the zone specified in S5.3.1.1 that is contactable from any direction by the test device described in the standard, except any surface on the front of a seat back or restraining barrier 3 inches or more below the top of the seat back or restraining barrier.

The final rule was published January 28, 1976. As a result of a petition for reconsideration from Sheller Globe Corporation, the agency modified the head protection zone requirements in the standard so that the bus body side panels, window or door structure would not be considered part of the head protection zone. This was modified because the construction of some buses allowed those elements of the bus body to be in the head protection zone. In allowing this change the agency stated:

''As Sheller noted, the agency has never intended to include the body side panels and glazing in the protection zone. The roof structure and overhead projections from the interior are included in this area of the zone.''

From May 1977 until September 1981, NHTSA made at least four interpretations pertaining to the head protection zone requirement in the standard that show the bus sidewall extending in the head protection zone specified in the standard. Those interpretations dealt mainly with where the sidewall ends and the roof structure begins. Roof structures are required to meet the contactable surface requirements if they fall within the head protection zone. None of the manufacturers, Mid Bus, Collins, Coach and Equipment, and The Coachette Company, questioned whether the intent of the standard was based on a square bus body.

While there is no reason specified in the early rulemakings for the 3.25 inch dimension from the outboard edge of the school bus seat, NHTSA believes that this was considered to be a limitation caused by the size of the head form used for impact testing. The head form has a radius of 3.25 inches. Thus, there would be a 3.25 inch area from 12 inches above the seating reference point to the top of the seat back where the head form could not impact.

As can be seen by the history of the rulemaking, the head protection zones were included to prevent manufacturers from installing objects that the bus occupant's head may come in contact with during a collision. Those objects included the seat backs, luggage racks, and other items that were sometimes placed above the seats on the pre-standard school buses.

Thomas' assertion that changing the standard would not affect the impact testing requirement of the standard is incorrect. In fact, changing the head protection zone specified in S5.3.1.1(c) to a longitudinal plane 3.25 inches inboard of and parallel to the bus sidewall, window, or door structure would allow manufacturers to place objects that protrude outward from the bus body side panels 3.25 inches in an area that a school bus occupant's head is likely to strike if the bus is involved in a collision. These items would not have to meet the requirements for contactable surfaces and therefore would increase the potential for head injuries during a collision. Thomas offered no justification for changing the standard other than that they *perceived* that the standard was developed with a square school bus body in mind. The history of FMVSS No. 222 clearly indicates that the head protection zones were established with the bus occupant's head in mind and not the bus body as Thomas stated.

In accordance with 40 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the specified action requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, it denies the Thomas Built Buses, Inc. petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued: September 19, 1996.

L. Robert Shelton,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–24513 Filed 9–24–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 091096A]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene 14 public hearings on Draft Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) and its draft supplemental environmental impact statement (draft SEIS).

DATES: Written comments will be accepted until November 1, 1996. The hearings will be held from October 7 to October 17, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to and copies of the draft amendment and SEIS are available from Dr. Richard L. Leard, Senior Fishery Biologist, Gulf of Mexico Council, 5401 West Kennedy Boulevard, Tampa, FL 33609.

The hearings will be held in FL, AL, MS, LA and TX. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and special accommodations.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Leard, 813–228–2815; Fax: 813–225–7015.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on Draft Amendment 9 to the FMP and the associated draft SEIS. The purpose of Amendment 9 is to reduce the bycatch mortality of juvenile red snapper from shrimp trawling to a level that will allow the red snapper stock in the Gulf of Mexico to recover from its present overfished state. Under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, the red snapper stock must be rebuilt to a level of 20–percent spawning potential ratio by the year 2019. This rebuilding program is based on achieving a 50–percent reduction in bycatch mortality of juvenile red snapper in the Gulf shrimp fishery, beginning in 1997.

Amendment 9 would require the installation of NMFS-approved Bycatch Reduction Devices (BRDs) in all nets used by vessels trawling for shrimp in specified areas of the Gulf of Mexico exclusive economic zone (EEZ). Vessels trawling for royal red shrimp beyond the 100–fathom (183 m) contour and vessels trawling for groundfish or butterfish would be exempted. A single try net with a headrope length of 16 ft (4.9 m) or less per vessel would also be exempted. Amendment 9 also contains alternative areas where BRDs might be required in shrimp trawls: (1) In the EEZ of the Gulf of Mexico within the 100–fathom contour; (2) in the EEZ of the Gulf of Mexico within the 100–fathom contour west of Cape San Blas, FL; (3) in the EEZ of the Gulf of Mexico between the 10–and 100–fathom contours; and (4) in the EEZ of the Gulf of Mexico between the 10–and 100–fathom contours and west of Cape San Blas, FL.

In order for a BRD to be certified, the amendment would establish bycatch reduction criteria that would require the reduction of the bycatch of juvenile red snapper (age 0 and age 1) by a specified percentage from the average level of mortality on those age groups during the years 1984–1989. The amendment would also establish framework procedures for modifying bycatch reduction criteria, establishing BRD certification criteria, and a BRD testing protocol.

The hearings are scheduled from 7 p.m. to 10 p.m., as follows:

1. Monday, October 7, 1996—Holiday Inn Beachside, 3841 North Roosevelt Boulevard, Key West, FL 33040

2. Monday, October 7, 1996—Lake Charles Civic Center, 900 Lakeshore Drive, Lake Charles, LA 70602

3. Tuesday, October 8, 1996—Thibodaux Civic Center, 310 North Canal Boulevard, Thibodaux, LA 70301

4. Tuesday, October 8, 1996—Radisson Inn, 12635 Cleveland Avenue, Fort Myers, FL 33907

5. Wednesday, October 9, 1996—Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL 33607

6. Wednesday, October 9, 1996—Radisson Inn New Orleans Airport, 2150 Veterans Memorial Boulevard, Kenner, LA 70062

7. Monday, October 14, 1996—Franklin County Courthouse, 33 Market Street, Appalachicola, FL 32320

8. Monday, October 14, 1996—Holiday Inn Fort Brown, 1900 East Elizabeth, Brownsville, TX 78520

9. Tuesday, October 15, 1996—Pensacola Civic Center, 201 E. Gregory, Pensacola, FL 32501

10. Tuesday, October 15, 1996—Port Aransas Civic Center Auditorium, 710 West Avenue A, Port Aransas, TX 78373

11. Wednesday, October 16, 1996—Radisson Admiral Semmes Hotel, 251 Government Street, Mobile, AL 36602

12. Wednesday, October 16, 1996—Bauer Community Center, 2300 Highway 35 Bypass, Port Lavaca, TX 77979

13. Thursday, October 17, 1996—J.L. Scott Marine Education Center & Aquarium, 115 East Beach Boulevard, U.S. Highway 90, Biloxi, MS 39530

14. Thursday, October 17, 1996—Texas A&M University, 200 Seawolf Parkway, Galveston, TX 77553

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 30, 1996.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 17, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–24390 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 187
Wednesday, September 25, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 20, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Food and Consumer Service

Title: Form FCS–388, State Coupon Issuance and Participation Estimates.

Summary: Food stamp regulations require State agencies to submit on a monthly basis form FCS–388 to provide issuance and participation information.

Need and Use of the Information: The information is used to validate the annual food stamp household characteristic survey; to compile a statistical summary report for Congressional reports and other inquiries; and to monitor coupon issuance and reconciliation points for indications of accountability problems.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Semi-annually, Monthly.

Total Burden Hours: 4,542.

Food and Consumer Service

Title: Supplement to Financial Status Report, Administrative Costs in Nutrition Education and Training Program.

Summary: The Nutrition, Education and Training (NET) Program encourages effective dissemination of scientifically valid information to children participating in the school lunch and related child nutrition programs by establishing a system of grants to State educational agencies for the development of comprehensive nutrition information and education programs.

Need and Use of the Information: To ensure compliance with statutory conditions, it is necessary to identify the amount of both Federal grant funds and State matching funds that the State agencies have applied to NET program administrative costs. The form FCS–665 has been developed to capture subdivisions of total program outlays.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 19.

Frequency of Responses: Reporting: Quarterly, Annually.

Total Burden Hours: 24.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–24578 Filed 9–24–96; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Patent Application Serial Number 08/691,069, ''System and Method for Materials Process Control,'' filed August 1, 1996, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Zellweger Uster of Knoxville, Tennessee.

DATES: Comments must be received on or before December 24, 1996.

ADDRESSES: Send comments to: USDA–ARS-Office of Technology Transfer, 10300 Baltimore Boulevard, Building 005, Room 401, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: Willard J. Phelps of the Office of Technology Transfer, at the Beltsville address given above; telephone 301–504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public.

The prospective exclusive license will be royalty-bearing, and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety calendar days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–24579 Filed 9–24–96; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 960916259–6259–01]

RIN 0607–XX16

Decennial Population and Housing Count Determinations for Places Incorporating Between the National Censuses

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Program Termination.

SUMMARY: This document will serve as notice to the states and local governments and to other Federal agencies that the Bureau of the Census will no longer fund the operations necessary to determine the April 1, 1990

census population and housing unit counts for entities that incorporate or organize as counties, boroughs, cities, towns, villages, townships, or other general purpose governments between the 1990 and 2000 decennial censuses. This program will, however, be available to those entities that desire this service on a fee-paid basis.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Joel L. Morrison, Chief, Geography Division, Bureau of the Census, Washington, D.C. 20233–7400, telephone (301) 457–1132.

SUPPLEMENTARY INFORMATION: The Bureau of the Census first began to make these count determinations in 1972 in response to the requests of local governments to establish eligibility for participation in the General Revenue Sharing Program authorized under PL 92–512. At that time, the Bureau of the Census established a fee-paid program enabling entities with annexations to obtain updated decennial census population counts that reflected the population living in the boundary change areas; the Bureau of the Census received funding from the U.S. Department of the Treasury to make those determinations for larger annexations that met prescribed criteria, and for the new incorporations. The General Revenue Sharing Program ended on September 30, 1986. The Bureau of the Census continued to fund the count update operation through fiscal year 1995 for the large annexations, and to date for newly incorporated areas. There is no funded Federal legislative requirement that this work continue.

However, the Bureau of the Census will continue to make count determinations for such newly incorporated areas at the request of local governments, provided that any and all costs associated with this work are borne by the local governmental entity.

For information on the procedure to request determinations under the fee for service based program, please contact Dr. Joel L. Morrison, Chief, Geography Division, Bureau of the Census, Washington, D.C. 20233–7400, telephone (301) 457–1132.

Authority to continue this program on a fee for service basis is contained in Title 13, United States Code, Section 8.

Dated: September 18, 1996.

Bryant Benton,

Deputy Director, Bureau of the Census.

[FR Doc. 96–24475 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

[A–588–840]

Notice of Postponement of Preliminary Antidumping Duty Determination: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 25, 1996.

FOR FURTHER INFORMATION CONTACT:

V. Irene Darzenta (202–482–6320) or Howard Smith (202–482–5193), Office of AD/CVD Enforcement, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

POSTPONEMENT OF PRELIMINARY DETERMINATION: On May 28, 1996, the Department of Commerce (the Department) initiated this antidumping duty investigation (61 FR 28164, June 4, 1996). The notice of initiation stated that if this investigation proceeds normally, the Department would issue its preliminary determination by October 15, 1996.

In accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), on August 27 and 29, 1996, the petitioner, Dresser-Rand Company, made a timely request for an extension of no more than 50 days of the period within which the preliminary determination must be made. Under section 733(c)(1)(A) of the Act and section 353.15(c) of the Department's regulations, if the Department receives a request for postponement of the preliminary determination from the petitioners not later than 25 days before the scheduled date for the preliminary determination the Department will, absent compelling reasons for denial, grant the request. Given that there are no compelling reasons to deny this request, we are postponing our preliminary determination in this investigation until no later than December 4, 1996.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: September 12, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary, Import Administration.

[FR Doc. 96–24604 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–DS–M

Princeton University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–056. Applicant: Princeton University, Princeton, NJ 08544–0033. Instrument: Electrical Capacitance Tomography Unit, Model PTL 300–TP-G. Manufacturer: Process Tomography, Ltd., United Kingdom. Intended Use: See notice at 61 FR 30221, June 14, 1996. Reasons: The foreign instrument provides statistical description and mapping of the spatial and temporal flow of gas-particle suspensions in pipes. Advice received from: National Institute of Standards and Technology, September 3, 1996.

Docket Number: 96–070. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Compact Geotechnical Centrifuge. Manufacturer: Chiker Technologies, United Kingdom. Intended Use: See notice at 61 FR 39948, July 31, 1996. Reasons: The foreign instrument provides rotation of 900 RPM to obtain high and well controlled pressure with much smaller soil samples than possible with conventional long-arm centrifuges. Advice received from: Department of the Interior, September 6, 1996.

The National Institute of Standards and Technology and the Department of the Interior advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–24608 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–DS–P

University of California, Los Alamos; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–071. Applicant: University of California, Los Alamos, CA 87545. Instrument: ICP Mass Spectrometer, Model PlasmaQuad. Manufacturer: Fisons Instruments, United Kingdom. Intended Use: See notice at 61 FR 41773, August 12, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) a minimum limit of detection of 0.025 ng/L in the actinide region, (2) abundance sensitivity of < $1x10^{-7}$ at M–1 and (3) quadrupole operation at 2.2 MHz or higher. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–24606 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–DS–P

The University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–068. Applicant: The University of Vermont, Burlington, VT 05405. Instrument: Multisample Inlet Manifold for Mass Spectrometer. Manufacturer: Pro-Vac Services, United Kingdom. Intended Use: See notice at 61 FR 39948, July 31, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: This is a compatible accessory for an existing instrument purchased for the use of the applicant.

The National Institutes of Health advises in its memorandum dated July 24, 1996, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–24607 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–535–001]

Cotton Shop Towels from Pakistan; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) is conducting administrative reviews of the countervailing duty order on cotton shop towels from Pakistan. For administrative convenience, the Department is combining the reviews covering the periods January 1, 1992 through December 31, 1992 (1992) and January 1, 1993 through December 31, 1993 (1993). We preliminarily determine the net subsidy to be 7.81 percent *ad valorem* for all companies for 1992. For 1993, we preliminarily determine the net subsidy to be 11.50 percent *ad valorem* for Eastern Textiles (Eastern), 11.54 percent *ad valorem* for Creation (Pvt.), Ltd. (Creation), and 5.02 percent *ad valorem* for all other companies. If the final results remain the same as these preliminary results of administrative reviews, we will instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 25, 1996.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Lorenza Olivas, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1984, the Department published in the Federal Register (49 FR 8974) the countervailing duty order on cotton shop towels from Pakistan. On March 12, 1993, the Department published a notice of ''Opportunity to Request Administrative Review'' (58 FR 13583) of this countervailing duty order for 1992. We received a timely request for review from Milliken & Company (Milliken), a U.S. producer of the subject merchandise and the petitioner in the original investigation. For 1993, the notice of ''Opportunity to Request Administrative Review'' was published on March 4, 1994 (59 FR 10368). Milliken, as well as the Government of Pakistan, the Towel Manufacturers Association of Pakistan and exporters of shop towels from Pakistan requested a review for this period. We initiated the 1992 and 1993 reviews on May 6, 1993 (58 FR 26960) and April 15, 1994 (59 FR 18099), respectively. The 1992 review covers 17 manufacturers/exporters of the subject merchandise. The 1993 review covers 20 manufacturers/exporters. The reviewed exporters account for virtually all exports of the subject merchandise. Both reviews cover five programs.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (54 FR 23366; May 31, 1989) (Proposed Regulations), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Scope of the Review

The subject merchandise is cotton shop towels from Pakistan. During the review periods, this merchandise was classifiable under item number

6307.10.20 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Best Information Available (BIA) for Creation

Section 776(c) of the Act requires the Department to use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation.'' *See also* 19 CFR section 355.37.

In determining what rate to use as BIA, the Department follows a two-tiered methodology. The Department assigns lower BIA rates to those respondents who cooperated in an administrative review (tier two) and rates based on more adverse assumptions to respondents who did not cooperate, or significantly impeded the proceeding (tier one). See *Allied Signal Aerospace Co.* v. *United States,* 996 F. 2d 1185 (Fed. Cir. 1993), *aff'd,* 28 F. 3d 1188, *cert. denied,* 1995 U.S. Lexis 100 (1995). Creation, an exporter during 1993, did not respond to the Department's initial or two supplemental questionnaires. However, the Government of Pakistan provided information regarding Creation's volume and value of exports during the 1993 administrative review period and regarding Creation's non-use of certain programs during that review period. For these preliminary results, we have utilized the information provided by the Government of Pakistan to the extent that it permitted us to calculate a program-specific rate for Creation. See Certain Steel Products from Italy; Final Affirmative Countervailing Duty Determinations (58 FR 37327, 37329; July 9, 1993). In the case of two programs, this information was inadequate and, in accordance with section 776 of the Act, we assigned to Creation a tier-one BIA rate for those programs for 1993. This tier one BIA rate is the highest individual rate found, either in the investigation or in a subsequent administrative review, for these programs.

Most companies did not provide information regarding the benefits earned under the Income Tax Reduction Program. For these companies, we used tier one BIA for this program in both reviews. Eight others attempted to cooperate but provided inadequate information as to the benefit earned under this program during 1993. For these companies, we used tier two BIA.

Calculation Methodology for Assessment and Cash Deposit Purposes

In accordance with *Ceramica Regiomontana, S.A.* v. *United States,* 853 F. Supp. 431 (CIT 1994), we calculated the net subsidy on a country-wide basis by first calculating the total subsidy rate for each company subject to the administrative review. We then weighted the rate received by each company using as the weight its share of total Pakistani exports to the United States of subject merchandise, including all companies, even those with *de minimis* and zero rates. We then summed the individual companies' weighted rates to determine the country-wide, weighted-average subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis,* as defined by 19 CFR 355.7 (1994), for each review period, we examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). None of the companies had net subsidy rates which were significantly different during the 1992 review period pursuant to 19 CFR 355.22(d)(3). Therefore, all companies are assigned the country-wide rate in 1992. In 1993, Eastern had a significantly different rate. Based on BIA, Creation also had a significantly different rate. These companies are treated separately for assessment and cash deposit purposes. All other companies are assigned the country-wide rate.

Analysis of Programs

I. Programs Previously Determined to Confer Bounties or Grants

A. Export Financing

The Export Finance Scheme (EFS), which is administered by the State Bank of Pakistan, grants short-term loans at below-market interest rates to exporters. The EFS has two parts. Under Part I, exporters may obtain financing on irrevocable letters of credit or firm export orders. Under Part II, exporters may obtain financing in the form of a credit line based upon the value of the previous year's eligible exports. The Department found this program countervailable in the investigation (see Cotton Shop Towels from Pakistan: Final Affirmative Countervailing Duty Determination (49 FR 1408; January 11, 1984)) (investigation) and in all subsequent reviews in accordance with section 771(5) of the Act because receipt of this benefit was based solely on export performance and the interest rates were preferential. There has been no new information or evidence of changed circumstances in these reviews to warrant reconsideration of this program's countervailability.

During the review periods, shop towel exporters made interest payments on loans obtained under Part I of the EFS. The interest rates ranged between 7 percent and 11 percent. Loan terms require payment within a maximum of 150 days. As our benchmark, we used the national average commercial rates for short-term credit which was reported by the Government of Pakistan. These rates were 14.5 percent applicable in 1991, 14 percent in 1992, and 15.5 percent in 1993.

To calculate the benefit, we took the difference between the actual interest paid and the interest that would have been paid if the loans had been obtained at commercial rates. See Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Welded Pipe Fittings From India (60 FR 10564; February 27, 1995). For loans obtained under Part I of the EFS, the financing reported was specific to shipments made to the United States. We received no information indicating that loans were received under Part II. For this reason, where we could not determine if loans were obtained under Part I or Part II, we assumed that they were obtained under Part I and were specifically benefitting subject merchandise exports to the United States. Therefore, we divided the benefit derived from Part I loans by total exports of subject merchandise to the United States. On this basis, we preliminarily determine the net subsidy from this program for 1992 to be 0.72 percent *ad valorem* for all manufacturers and exporters in Pakistan of shop towels. For 1993, we preliminarily determine the net subsidy from this program to be 0.49 percent *ad valorem* for all manufacturers and exporters in Pakistan of shop towels, except for Eastern, who has a significantly different subsidy rate. The rate for Eastern is 6.31 percent *ad valorem*. As BIA, we assigned to Creation the rate determined for Eastern in the 1993 review, because it is the highest rate calculated for any company that used this program in any administrative review.

B. Excise Tax, Sales Tax and Customs Duty Rebate Programs

The Central Bureau of Revenue administers the rebate of excise taxes, sales taxes and customs duties on both

domestic and imported inputs used in exported products. The excise tax rebate applicable to cotton shop towels during the review periods was 6.0 percent from January 1, 1992 through September 27, 1992, 4.72 percent from September 28, 1992 through July 13, 1993, and 1.79 percent from July 14, 1993 through December 31, 1993. This rebate is calculated on the basis of the f.o.b. value of exports. There was no rebate of sales taxes or customs duties in either review period.

In the investigation and subsequent reviews, we found the program countervailable because the Government of Pakistan failed to establish the requisite linkage and comparison between taxes paid and rebates provided. In this review, the Government of Pakistan did not provide new information to establish the required linkage. Therefore, we preliminarily determine that the Government of Pakistan pays these rebates without regard to specific taxes incurred in the production of shop towels and that the full amount of the rebate is countervailable because the rebate is contingent upon export performance. See Preliminary Results of Countervailing Duty Administrative Review: Cotton Shop Towels from Pakistan (58 FR 32104; June 8, 1993) and Final Results of Countervailing Duty Administrative Review: Cotton Shop Towels from Pakistan (58 FR 48038; September 14, 1993).

These cash rebates are earned on a sale-by-sale basis, and a firm can precisely calculate the amount of rebate it will receive for each export sale at the moment the sale is made. Because the amount of these rebates is known at the time of export, we calculate the benefit from this rebate program on an ''as-earned'' basis for all exporters, including Creation. To calculate the benefit, we separately weight-averaged the rates applicable to cotton shop towel exports during the 1992 and 1993 review periods. On this basis, we preliminarily determine the net subsidy from these programs to be 5.67 percent *ad valorem* for all manufacturers and exporters in Pakistan of shop towels during 1992. For 1993, we preliminarily determine the net subsidy from these programs to be 3.35 percent *ad valorem* for all manufacturers and exporters in Pakistan of shop towels, including Creation.

C. Income Tax Reductions

Before July 1992, the Government of Pakistan provided firms with a maximum 50-percent reduction of their income taxes on income generated from exports. The percentage of the reduction depended on the size of the company and the form of business ownership. In case of a loss (*i.e.*, where there was no tax liability), the export income tax credit could be carried forward to the following year as an offset against income. In accordance with section 771(5) of the Act, the Department found this program countervailable in the investigation and all subsequent reviews because receipt of this benefit was contingent upon export performance. There has been no information provided in this review to warrant reconsideration of this program's countervailability.

This program was modified in 1992. Effective July 1, 1992, the Finance Act 1992, under section 80cc of the Income Tax Ordinance, required the commercial banks to withhold the income tax at source from all foreign exchange proceeds. The amount withheld becomes the company's final tax liability irrespective of whether or not the company is profitable. Eligible exporters continued to receive a tax reduction rate on export earnings. For shop towel exporters, the reduction was 0.50 percent of total export earnings.

To calculate the benefit to each company, we subtracted the total amount of income tax the company actually paid during the review period from the amount of tax the company would have paid during the review period had it not claimed any reductions under the Income Tax Reduction Program. We then divided this difference by the value of the company's total exports. See Preliminary Results of Countervailing Duty Administrative Review; Certain Iron Metal Castings From India (61 FR 25623; May 22, 1996). For those companies which did not provide information regarding the benefits earned from these claimed reductions in one or both reviews, we assumed that they received benefits from this program, and assigned, as BIA, a rate of 1.88 percent, the highest rate found, either in the investigation or in a subsequent administrative review, for this program. We are using the highest rate found under this program because respondents failed to provide needed information even after the Department's repeated requests for the information from the shop towel exporters. In those instances where an exporter cooperated by attempting to provide data, but failed to provide adequate information on which to calculate accurately the benefit during 1993, we relied on company-specific information provided in the 1992 review for tier two BIA.

On this basis, we preliminarily determine the net subsidy from this program to be 1.42 percent *ad valorem* for all manufacturers and exporters in shop towels from Pakistan during 1992. For 1993, we preliminarily determine the net subsidy from this program to be 1.19 percent *ad valorem* for all manufacturers and exporters in Pakistan of shop towels, except for Eastern Textiles and Creation, who had significantly different overall subsidy rates. For Eastern, we calculated the benefit to be 1.84 *ad valorem*. For Creation, we assigned a tier one BIA rate of 1.88 percent *ad valorem* because it is the highest rate calculated for any company that used this program in any administrative review.

II. Other Programs

We examined the following programs and preliminarily determine that exporters of cotton shop towels did not apply for or receive benefits under them during the review periods:

- Import Duty Rebates
- Export Credit Insurance

Preliminary Results of Reviews

For 1992, we preliminarily determine the net subsidy to be 7.81 percent *ad valorem* for all companies. For 1993, we preliminarily determine the net subsidy to be 11.50 percent *ad valorem* for Eastern, 11.54 percent *ad valorem* for Creation and 5.02 percent *ad valorem* for all other companies.

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties of 7.81 percent *ad valorem* for all shipments of the subject merchandise exported from Pakistan on or after January 1, 1992 and on or before December 31, 1992. For all shipments of the subject merchandise exported from Pakistan on or after January 1, 1993 and on or before December 31, 1993, the Department intends to instruct the U.S. Customs Service to assess countervailing duties of 11.50 percent *ad valorem* for all shipments of the subject merchandise from Eastern, 11.54 percent *ad valorem* for all shipments of the subject merchandise from Creation and 5.02 percent *ad valorem* from all others.

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of 11.50 percent of the f.o.b. invoice price on all shipments of this merchandise from Eastern, 11.54 percent of the f.o.b. invoice price on all shipments of this merchandise from Creation, and 5.02 percent of the f.o.b. invoice price from all others on all shipments of this merchandise entered, or withdrawn from warehouse, for

consumption on or after the date of publication of the final results of these reviews.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceedings may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceedings, but in no event later than the date the case briefs are due. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 16, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–24605 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 091396A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taurus Space Launch Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Air Force for an authorization to take small numbers of seals, sea lions and fur seals by harassment incidental to launches of Taurus space launch vehicles (Taurus SLV) at Launch Support Complex 576E (LSC- 576E), Vandenberg Air Force Base, CA (Vandenberg). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the incidental take, by harassment, of small numbers of Pacific harbor seals, and other seal and sea lion species, in the vicinity of Vandenberg for a period of 1 year.

DATES: Comments and information must be received no later than October 25, 1996.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Division (Attn: Small Take Program Manager), Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application and previous Federal Register notices on related actions may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 310–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines ''harassment'' as:

> * * *any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On August 14, 1996, NMFS received a revised application from the U.S. Air Force, Vandenberg, requesting an authorization for the harassment of small numbers of harbor seals and possibly California sea lions and northern elephant seals, incidental to launches of Taurus SLVs at LSC–576E, Vandenberg. These launches would place commercial payloads into earth orbit. Because LSC–576E is located north of most other launch complexes at Vandenberg and because there are oil production platforms located off the coast to the south of LSC–576E, missions flown from LSC–576E do not fly directly on their final southward course. The normal trajectory for a LSC–576E launch is in a general west-southwest direction away from the coastline. The flight paths for each 1997 launch will proceed on an initial azimuth of 205° until approximately 24 kilometers (km)(15 miles (mi)) west of the shoreline. The Taurus SLV will then perform a dogleg maneuver left to a final mission-specific azimuth of between 180° and 197°. No Taurus SLV launch from LSC–576E will proceed southeast, overflying San Miguel (SMI) or Santa Rosa islands. Orbital Sciences Corporation (OSC 1996) anticipates launching two Taurus SLVs during the 1-year period of validity for this proposed authorization.

As a result of the noise associated with the launch itself and the resultant sonic boom, there is the potential to cause a startle response to those harbor seals that haul out on the coastline south and southwest of Vandenberg and may be detectable to marine mammals in waters off Vandenberg and to the west of the Channel Islands. Launch noise would be expected to occur over the coastal habitats in the vicinity of LSC–576E while a low-level sonic boom may be heard west of the Channel Islands.

Description of Habitat and Marine Mammals Affected by Taurus

The Southern California Bight (SCB), including the Channel Islands area, supports a diverse assemblage of pinnipeds (seals and sea lions) and cetaceans (whales, dolphins, and porpoises). California sea lions (Zalophus californianus), northern elephant seals (Mirounga angustirostris), Pacific harbor seals (Phoca vitulina) and northern fur seals (Callorhinus ursinus) breed on the Islands, with the largest rookeries on SMI and San Nicolas Island.

A small breeding population of California sea lions occurs on Vandenberg, and both sea lions and northern elephant seals are regular visitors to the shoreline near LSC–576E. A small population of harbor seals are normal residents of Purisima Point, and southern sea otters (*Enhydra lutra*) were censused there during the spring of 1995[1].

Because it is the only species that hauls out along the Vandenberg coast in any numbers, the harbor seal is the only marine mammal anticipated to be incidentally harassed by Taurus SLV launches. A description of the SCB population of harbor seals and other pinniped species was provided in the notices published on May 10, 1995 (60 FR 24840) and August 18, 1995 (60 FR 43120), in conjunction with publication of the previous notices of application for Vandenberg launch activities and is, therefore, not repeated here. In addition, new information on harbor seals has been provided more recently in another notice (61 FR 45404, August 29, 1996) and is summarized below. Additional information on California marine mammal populations can be found in Barlow *et al.* (1995), while marine mammal information specific to Vandenberg can be found in Roest (1995). Interested reviewers are encouraged to refer to the documents cited above for the appropriate discussion. These documents are also available from NMFS (see **ADDRESSES**).

Hanan and Beeson (1994) reported 21,462 seals counted on the mainland coast and islands of California during May and June 1994. Using that count and Huber *et al.*'s (1993) correction factor (1.61 times the count) for animals not hauled out gives a best population estimate of 34,554 harbor seals in California (Barlow *et al.* 1995). A total of 19 distinct haulout sites are present on Vandenberg (between Point Sal and Jalama Beach), although not all sites are used regularly (Roest 1995). For most of the year, the average number of harbor seals on the Vandenberg coast is about 330 individuals. This number nearly doubles during the molting season (June) to roughly 610. The largest population occurs on South Vandenberg, although a smaller permanent population is present at two sites near Purisima Point on North Vandenberg. In general, it appears that the current population of harbor seals at all 19 haulout sites on Vandenberg peaks at roughly 600 to 800 seals (Air Force 1996).

Maximum numbers of harbor seals at Purisima Point in May/June average about 40 while the Spur Road site seems to have an average maximum of from 60 to 80 individuals, and Rocky Point has approximately 70 harbor seals in the spring. More than other sites, Spur Road appears to have peak numbers in the fall (Air Force 1996, Roest 1995). However, both the Spur Road and Purisima Point sites are submerged at high tide, making them unavailable to harbor seals during those times.

Potential Effects of Taurus SLV Launches on Marine Mammals

The effect on harbor seals is expected to be disturbance by sound, which is anticipated to result in a negligible short-term impact to small numbers of harbor seals and other pinnipeds that are hauled out at the time of Taurus SLV launches. No impacts are anticipated to animals that are in the water at the time of launch. Detailed descriptions and analyses of the expected impact from rocket launches on harbor seals and other marine mammals have been provided in previous notices (60 FR 24840, May 10, 1995; 60 FR 38308, July 26, 1995; 60 FR 43120, August 18, 1995; 60 FR 52653, October 10, 1995; and 61 FR 10727, March 15, 1996) and are not repeated here. These documents are available from NMFS (see **ADDRESSES**).

Based upon measurements made on a March 13, 1994, Taurus SLV launch by Stewart *et al.* (1994), the sound exposure level (SEL) recorded at Purisima Point (40–second duration; 2.24 km (1.4 mi) from the launch pad) was 108.1 dB (A-weighted: re 20μPa @ 1 m) and 127.4 dB (unweighted). Twenty of the 23 harbor seals that were hauled out at this location before the launch fled immediately into the water within a few seconds after launch. The A-weighted SEL of noise recorded at Rocky Point (130–second duration; 20.4 km (12.7 mi) from the launch pad) was 80.0 dB, while the unweighted SEL was 103.9 dB. That noise included launch noise and possibly a sonic boom below 50 Hz. Twenty of 74 harbor seals that were monitored at Rocky Point fled into the water within several seconds of the sound arriving there. However, none of the four young pups that were ashore left the beach nor were they separated from their mothers. A comparison of the reactions of harbor seals to sound at the two study sites indicates that the intensity and duration of reactions of harbor seals to the type of noise associated with the Taurus SLV was directly related to the intensity of the noise to which they were exposed (Stewart *et al.* 1994). Substantially more seals reacted to the launch noise at Purisima Point than at Rocky Point. Furthermore, seals at Purisima Point reacted much more energetically and remained in the water substantially longer at Purisima Point than did seals at Rocky Point.

Although monitoring was apparently not conducted at Spur Road (approximately 0.5 mi (804 m) from LSC–576E) in 1994, based upon measurements for Delta II (Aerospace Corporation 1996) and comparing these results with Taurus (Stewart *et al.* 1994), an SEL can be estimated for Spur Road to be approximately 115 dBA (129 dB unweighted). While an SPL of 115–120 dBA (re 20μPa @ 1 m) may cause a short-term (minutes to hours), temporary threshold shift (TTS) injury to hearing (Richardson *et al.* 1995), due to the infrequency of launches at LSC–576E and nearby LSC–2W, TTS-injuries are not expected to be serious and the animals will recover.

Rocket engine noise over the Northern Channel Islands (NCI) from the just-launched Taurus SLVs traveling at supersonic speeds should not affect pinnipeds hauled out on these islands. The Taurus SLV flight paths will be to the west-southwest away from the California coast. Sonic boom noise developed as a result of these launches is not expected to reach the Channel Islands. Low intensity rumbling noise may reach the Channel Islands with the effect ranging from a simple alert response to a startle response, which, while unlikely, could result in movement into the water. The initial Taurus SLV launch from LSC–576E did not cause a sonic boom over SMI, and there was no response by pinniped species on SMI (OSC 1996) from launch noise.

Mitigation

Unless constrained by other factors including, but not limited to, human safety, national security, or launch trajectories, efforts to ensure minimum negligible impacts of Taurus SLV

[1] Sea otters are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and not NMFS. Discussions between the applicant and the USFWS have taken place. Please contact those agencies for additional information.

launches on harbor seals and other pinnipeds are proposed for inclusion in the Incidental Harassment Authorization. These proposals include:

1. Avoidance, whenever possible, of launches during the harbor seal pupping season of February through May (the scheduled 1997 Taurus SLV launches are presently scheduled outside this period); and

2. Preference for night launches during the period of the year when harbor seals are hauled out in any numbers along the coast of North Vandenberg.

Monitoring and Reporting

The holder of the Incidental Harassment Authorization has proposed a monitoring program to assess the impact of Taurus SLV launches on the harbor seal haulouts in the vicinity of Spur Road and Purisima Point. The applicant proposes to monitor the harbor seal population at these locations for a period of 3 days prior to launch, immediately following launch, and for a 3-day period following launch. The monitoring will consist of a population assessment to determine if there is any reduction in numbers of animals or a notable change in behavior. Video and photographic monitoring of daylight launches would also be conducted if any launch takes place between February and September 1997. The applicant will also perform additional post-launch monitoring for any launches conducted during the harbor seal pupping season. OSC will conduct an acoustic (sound propagation) monitoring program for the first Taurus SLV launch at LSC–576E and the applicant will continue its program for prediction and monitoring focused sonic boom impacts on the NCI.

A report on this monitoring program would be required to be submitted prior to next year's authorization request, unless the monitoring indicated that serious injuries or mortalities had occurred that might relate to the launching. In this case, the authorization would require immediate notification of this fact to the Southwest Regional Director, NMFS.

Conclusions

Based upon information provided by the applicant, the results from monitoring a previous Taurus SLV launch, and previous reviews of the incidental take of harbor seals by this activity, NMFS believes that the short-term impact of the launching of Taurus SLVs is expected to result at worst, in a temporary reduction in utilization of the haulout as seals leave the beach for the safety of the water and may result in a non-serious TTS injury to those harbor seals hauled out or on the water surface within approximately 3,000 ft of LSC–576E. The launching is not expected to result in any reduction in the number of harbor seals, and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on harbor seals at Vandenberg are unlikely but may eventually be determined by the frequency and timing of all launches at Vandenberg.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for launches of Taurus SLV at LSC–576E provided the monitoring and reporting requirements are implemented. NMFS has preliminarily determined that the proposed launches of Taurus SLVs at LSC–576E would result in the Level A harassment taking of only small numbers of harbor seals, will have a negligible impact on the harbor seal stock and will not have an unmitigable adverse impact on the availability for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: September 19, 1996.

Rennie S. Holt,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–24509 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

September 19, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: September 25, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

On the request of the Government of the Dominican Republic, the U.S. Government agreed to increase the 1996 Guaranteed Access Level for Category 448.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 1359, published on January 19, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 19, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 25, 1996, you are directed to increase the Guaranteed Access Level for Category 448 to 100,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–24518 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced of Manufactured in Malaysia

September 19, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 25, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 619 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62394, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 19, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 25, 1996, you are directed to increase the limit for Category 619 to 5,079,556 square meters [1], as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–24517 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–DR–F

Settlement of Import Limits for Certain Wool Textile Products Produced or Manufactured in Russia

September 19, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the Federal Register on September 20, 1995 (60 FR 48695) announces a request by the Government of the United States for consultations with the Government of the Russian Federation with respect to women's and girls' wool coats in Category 435.

In a Memorandum of Understanding (MOU) dated August 5, 1996, the Governments of the United States and the Russian Federation agree to establish limits for wool textile products in Category 435 for four consecutive one-year periods, beginning on October 1, 1996 and extending through September 30, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Category 435 for the period October 1, 1996 through September 30, 1997.

This limit may be subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing on the date that the Russian Federation becomes a member of the World Trade Organization.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the August 5, 1996 MOU, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 19, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Memorandum of Understanding dated August 5, 1996 between the Governments of the United States and the Russian Federation; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in the Russian Federation and exported during the twelve-month period beginning on October 1, 1996 and extending through September 30, 1997, in excess of 51,000 dozen.

Textile products in Category 435 which have been exported to the United States prior to October 1, 1996 shall not be subject to this directive.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1995.

Textile products in Category 435 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Should the Russian Federation become a member of the World Trade Organization, the limit set forth above may be subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–24519 Filed 9–24–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures and Option Contracts on the Dow Jones Taiwan Stock Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) originally applied for designation as a contract market in futures and futures options on the Taiwan Stock Index. Comment on the proposed contracts was requested in a Federal Register notice dated June 21, 1996 (61 FR 25636). The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment on the CME's amended proposals in the Dow Jones Taiwan Stock Index is warranted.

DATES: Comments must be received on or before October 10, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the Chicago Mercantile Exchange Dow Jones Taiwan Stock Index futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581, telephone 202–418–5277. Facsimile number: (202) 418–5527. Electronic mail: ssherrod@cftc.gov

SUPPLEMENTARY INFORMATION: The Dow Jones Taiwan Stock Index is a capitalization-weighted index of 113 stocks listed on the Taiwan Stock Exchange. The index underlying the original application, the Taiwan Stock Index, is a capitalization-weighted index of 100 stocks listed on the Taiwan Stock Exchange. The Dow Jones Taiwan Stock Index and the Taiwan Stock Index have an overlap of 86 stocks; the weight of those 86 stocks in the Dow Jones Taiwan Stock Index is 95.33%, and the weight of those in the Taiwan Stock Index is 93.50%. Thus, the Dow Jones Taiwan Stock Index is a close substitute for the Taiwan Stock Index.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 19, 1996.

John R. Mielke,

Acting Director.

[FR Doc. 96–24594 Filed 9–24–96; 8:45 am]

BILLING CODE 6351–01–P

Chicago Mercantile Exchange: Proposed Amendments to the Cash Settlement Provisions of the CME Three-Month Eurodollar and One-Month LIBOR Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed amendments to commodity futures contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has submitted proposed amendments to the cash settlement provisions of its three-month Eurodollar and one-month LIBOR futures contracts. Under the proposal, cash settlement of the contracts would be based upon an interest rate survey conducted by the British Bankers' Association (BBA), rather than by the CME. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before October 10, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the amendments to the CME three-month Eurodollar and one-month LIBOR futures contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581, telephone 202–418–5277.

Facsimile number: (202) 418–5527.
Electronic mail: ssherrod@cftc.gov

SUPPLEMENTARY INFORMATION: Under current rules for the subject futures contracts, to compute the cash settlement price the CME surveys Exchange-approved reference banks twice on the last day of trading. The Exchange surveys 16 reference banks selected at random from a list of at least 20 banks designated by the Exchange. Each reference bank quotes its perception of the rate at which three-month Eurodollar time deposits currently are offered by the market to prime banks in the London interbank market. The Exchange eliminates the four highest and lowest quotes and calculates the settlement yield as the average of the remaining eight quotes, rounded to two decimal places (the nearest one-hundredth of one-percent). The cash settlement price is the difference between one hundred and the settlement yield (expressed as a percent). Cash settlement is effected using normal variation margin procedures.

The Exchange proposes to cash settle the subject futures contracts based on the BBA Interest Settlement Rate (ISR) for Eurodollar deposits of the relevant maturity on the day after the last trading day, rather than on the basis of the CME-conducted survey on the last trading day. The BBA ISR is computed each day based on a survey of 16 banks that BBA has designated. Each surveyed bank quotes its view of the rate at which three-month Eurodollar time deposits are available in the London interbank market at 11:00 a.m. London time. BBA eliminates the four highest and four lowest rates and calculates the ISR as the average of the remaining eight quotes, rounded to five decimal places. The Exchange will compute the settlement yield by rounding the ISR to two decimal places. As under current rules for the contracts, the cash settlement price will be the difference between one hundred and the settlement yield.

The CME proposes to implement the changes to the cash settlement provisions immediately upon Commission approval for application to all existing and newly listed contracts.

The Division requests comment on the proposed changes. Comment also is requested of the proposal to apply the amendments to existing contracts.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 19, 1996.

John Mielke,

Acting Director.

[FR Doc. 96–24595 Filed 9–24–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Epidemiologic Studies of Morbidity Among Gulf War Veterans: A Search for Etiologic Agents and Risk Factors—Seabee Health Study (Study 5).

Type of Request: New collection.

Number of Respondents: 10,000.

Responses per Respondent: 1.1.

Annual Responses: 11,000.

Average Burden per Response: 37 minutes.

Annual Burden Hours: 6,800 hours.

Needs and Uses: The Department of Defense is seeking information regarding the prevalence of symptoms and illnesses in Gulf War veterans and other veterans of the Gulf War era. The information collected hereby, will be used to evaluate differences in symptoms and illnesses between military personnel deployed to the Gulf War and military personnel who were stationed elsewhere during that era. It will be used additionally to help define post-Gulf War symptoms and illnesses and to identify host susceptibility and environmental risk factors. This study will focus upon a population of U.S. Navy Seabees, some of whom have left military service.

Affected Public: Individual or households.

Frequency: On occasion and one time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 19, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24479 Filed 9–24–96; 8:45 am]

BILLING CODE 5000–04–M

[Transmittal No. 96–79]

Section 36(b) Notification of Arms Sales

AGENCY: Department of Defense, Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–79, with attached transmittal and policy justification pages.

Dated: September 19, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

13 SEP 1996

In reply refer to:
I-04281/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-79, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $86 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Transmittal No. 96-79

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$86 million
TOTAL	$86 million

(iii) Description of Articles or Services Offered:
The modification and upgrade of the F-16A/B aircraft engine F100-PW-200 to the F100-PW-220E configuration including procurement and installation of 40 retrofit kits, support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.

(iv) Military Department: Air Force (VBH)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 13 Oct 1996

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - Modification of F-16A/B Aircraft Engines

The Government of Egypt has requested the purchase of services relating to the modification and upgrade of the F-16A/B aircraft engine F100-PW-200 to the F100-PW-220E configuration including procurement and installation of 40 retrofit kits, support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $86 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Retrofit of the F-16A/B aircraft engines will ensure continued commonality with the USAF 220 engine, production facilities, maintenance and supply support. The modification offers improved reliability, maintainability, safety and an increase in engine performance. Egyptian participation in this program is required for continuing cost-effective support of Egyptian F-16A/B aircraft.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Pratt and Whitney, West Palm Beach, Florida. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel to Egypt; however, it is estimated that one contractor representative will be required in-country to provide technical support for approximately one year following delivery and installation of the modified engines.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–24478 Filed 9–24–96; 8:45 am]
BILLING CODE 5000–04–C

Claims Settlement Authority Issuance to Defense Office of Hearings and Appeals

AGENCY: Department of Defense, Defense Office of Hearings and Appeals.

ACTION: Notice.

SUMMARY: The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated the authorities listed below to the Department of Defense (DOD). The Secretary of Defense further delegated this authority to the Defense Office of Hearings and Appeals (DOHA). This notice announces DOHA's intent to issue regulations implementing this new authority in the near future and that, in the meantime, that DOHA will use the procedures and practices applicable to the claims before the effective date of the transfer of authority, June 30, 1996, which are published in title 4, Code of Federal Regulations, Chapter 1, Subchapter C.

EFFECTIVE DATE: September 25, 1996.

ADDRESSES: Comments may be mailed to the Defense Legal Services Agency, Defense Office of Hearings and Appeals, Chief, Claims Division, P.O. Box 3656, Arlington, VA 22303.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, Chief, Claims Division, 703–696–8524.

SUPPLEMENTARY INFORMATION: Pursuant to the Legislative Branch Appropriations Act of 1996, most of the claims settlement functions of the U.S. General Accounting Office were transferred to the Director of OMB. See Sec. 211, Pub. L. 104–53, 109 Stat. 535. Subsequently, the Acting Director delegated these functions to various components within the Executive branch in a determination order dated June 28, 1996. This order delegated to the Department of Defense the authority to settle the following classes of claims against the United States:

a. Claims related to uniform services members' pay, allowances, travel, transportation, retired pay, and survivor benefits;

b. Claims by transportation carriers for amounts collected from them for loss and damage incurred to property incident to shipment at Government expense;

c. Claims for proceeds of sale of unclaimed property coming into the custody or control of the Army, Navy, Air Force or Coast Guard;

d. Final settlements of accounts of members of the Armed Forces, including the National Guard;

e. Reports on disposition of the effects of deceased members of the Army and Air Force for settlement under 10 U.S.C. 2771, 10 U.S.C. 4712 and 9712;

f. Claims for the proceeds of the sale of motor vehicles and items of household goods and personal property of members of the Uniformed Services reported dead, injured, ill or absent for a period of more than 29 days in a missing status;

g. Claims for the proceeds from the disposition of effects of deceased residents of the Armed Forces Retirement Home; and

h. Claims arising from DOD activities cognizable under 31 U.S.C. 3702, not otherwise delegated by the Director, OMB.

Effective September 4, 1996, the Secretary of Defense further delegated the authority to DOHA.

Before the effective date of the transfer, these claims were subject to the procedures prescribed by the Comptroller General at 4 C.F.R. Chapter 1, Subchapter C (1996). Until DOHA issues its own regulations implementing its new claims authority, DOHA's policy will be to apply these procedures and the U.S. General Accounting Office's practices to claims submitted to DOHA for settlement. As an exception, the authority to issue decisions in review of settlements will be exercised by a Claims Appeals Board on behalf of the Secretary of Defense.

For each of the types of claims described above, claimants should submit their claims to the agencies out of whose activity the claim arose and it is the agency's responsibility to forward the claim to DOHA with its comments. Claimants may submit their claims directly to DOHA. However, claimants are advised that submitting their claims directly to DOHA may delay consideration of their claims because DOHA will not settle a claim without first notifying the agency of the claim and requesting an administrative report from the agency. Claims should be sent to: Defense Legal Services Agency, Defense Office of Hearings and Appeals, Chief, Claims Division.

Dated: September 19, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24480 Filed 9–24–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Proposed Collection; Comment Request

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 25, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army Corps of Engineers, Waterborne Commerce Statistics Center, ATTN: CEWRC–NDC–C (Pierre S. Andrus), P.O. Box 61280, New Orleans, Louisiana 70161–1280.

Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Vessel Operation Report, ENG FORMS 3925, 3925B, and 3925P, OMB Control Number 0710–0006.

Needs and Uses: The Corps of Engineers uses ENG Forms 3925, 3925B, and 3925P as the basic instruments to collect waterborne commerce statistics. These data constitute the sole source for domestic vessel movements of freight and passenger on U.S. navigable waterways and harbors.

Affected Public: Business or Other for-Profit.

Annual Burden Hours: 50,166.

Number of Respondents: 1,398.
Responses per Respondent: 835.
Average Burden per Response: 41 minutes.
Frequency: Monthly.

SUPPLEMENTARY INFORMATION: This Paperwork Reduction Act submission is a currently approved collection. These data are also critical to the enforcement of the ''Harbor Maintenance Tax'' authorized under Section 1402 of Pub. L. 99–662.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 96–24549 Filed 9–24–96; 8:45 am]
BILLING CODE 3710–08–M

Proposed Collection; Comment Request

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 25, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army Corps of Engineers, Waterborne Commerce Statistics Center, ATTN: CEWRC–NDC–C (Pierre S. Andrus), P.O. Box 61280, New Orleans, Louisiana 70161–1280

Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Record of Arrivals and Departures of Vessels at Marine Terminals, ENG FORM 3926, OMB Control Number 0710–0005.

Needs and Uses: The Corps of Engineers uses ENG Form 3926 in conjunction with ENG Forms 3925, 3925B, and 3925P as the basic source of input to conduct the Waterborne Commerce Statistics data collection program. The annual publications, ''Waterborne Commerce of the United States, Parts 1–5'' are the result of the program.

Affected Public: Business or Other for-Profit.
Annual Burden Hours: 2,500.
Number of Respondents: 450.
Responses per Respondent: 12.
Average Burden per Response: 5 minutes.
Frequency: Monthly.

SUPPLEMENTARY INFORMATION: This Paperwork Reduction Act submission is a currently approved collection. If this data collection program being conducted voluntarily on ENG Form 3926 or an authorized automated equivalent were discontinued, then the accuracy of the statistics collected on ENG Forms 3925, 3925B, and 3925P would be negatively impacted.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 96–24550 Filed 9–24–96; 8:45 am]
BILLING CODE 3710–08–M

Corps of Engineers; Department of the Army

To Prepare a Draft Environmental Impact Statement for the Willamette River Basin Review Feasibility Study

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The alternatives to be evaluated in this feasibility study and EIS address the modification of operation and storage allocation of the Corps' 13-reservoir Willamette Basin, Oregon, system to better serve current and anticipated future water resource needs. A proposed action will be identified in the Final EIS.

FOR FURTHER INFORMATION CONTACT: Address questions about the alternatives and EIS to: Lynne Hamilton, telephone (503) 326–6169, Portland District, U.S. Army Corps of Engineers, Environmental Resources Branch, P.O. Box 2946, Portland, Oregon, 97208–2946.

SUPPLEMENTARY INFORMATION: The Willamette River Basin lies in northwestern Oregon. The Willamette Basin is the largest river basin wholly within Oregon and supports most of the State's population, larger cities, and many major industries. It also contains some of Oregon's most productive agricultural lands and supports nationally and regionally significant fish, wildlife, and plant species. There are a number of streams in the basin designated as State scenic waterways and Federal wild and scenic rivers. Water-related recreational opportunities in the basin are numerous.

The basin is bounded on the east by the Cascade mountain range, on the south by the Calapooya mountains, and on the west by the Coast range. The basin has a drainage area of over 29,000 square kilometers (11,200 square miles) at its confluence with the Columbia River. At Salem, the capital of Oregon, near the middle of the basin, the drainage area is about 18,900 square kilometers (7,300 square miles). The mainstem Willamette River forms at the confluence of the Coast Fork and Middle Fork Willamette rivers near the cities of Eugene and Springfield. The river flows northward for a total of about 317 kilometers (197 miles). Major cities on the Willamette River downstream of Eugene-Springfield include Corvallis, Albany, Salem, and Portland. Major eastside tributaries include the Middle Fork Willamette, McKenzie, Santiam, and Clackamas rivers. Major westside tributaries include the Coast Fork Willamette, Long Tom, Marys, Luckiamute, Yamhill, and Tualatin rivers.

The purposes of the Corps' Willamette projects include flood damage reduction, power generation, navigation, irrigation, recreation, domestic water supply, fish and wildlife conservation, and pollution abatement. Of the 13 Corps reservoirs in the Willamette River Basin, 11 are multiple-purpose, and 2 are re-regulating reservoirs for hydropower.

Six of the Corps' multipurpose projects in the Willamette Basin generate hydropower and have exclusive reservoir storage for this purpose. Releases from the power projects are used to generate electrical energy for local and regional consumption. Energy generated by the Corps' projects is marketed by Bonneville Power Administration to help meet local and regional energy demand within the Federal Columbia River Power System.

Water uses, needs, and public expectations have changed dramatically since the reservoir system was originally authorized in 1938. A full range of beneficial uses needs to be considered for the reservoir system. Because the Willamette Valley is heavily populated and one of fastest growing regions in the State, the demands placed on Corps reservoirs for municipal and industrial water supplies as well as irrigation needs are expected to increase in the future.

The water quality strategy for the Willamette River is currently based on release of stored water for low flow augmentation. Water quality permits based on the existing minimum flows provide no allowance for new waste loads in the future and presume that increased growth and development would be achieved within existing permit limits. Also, recreation has become a major economic and social use at many of the reservoirs and is dependent upon maintaining high conservation pool levels.

In recent years, the regional awareness for rebuilding fish and wildlife populations in the Willamette Basin has steadily increased. The Oregon Department of Fish and Wildlife (ODFW) has adopted a Wild Fish Management Policy to protect the genetic resources of Oregon's wild fish and has adopted management strategies by subbasin based on increasing natural production. Natural production is accepted as the key to restoration and recovery of the declines in native fish stocks as an effort to prevent more listings of fish species under the Endangered Species Act (ESA). In the Willamette Basin, steelhead and spring chinook salmon are native anadromous fish listed by the ODFW as sensitive species; recently, these species were petitioned for listing under the ESA. As of July 1996, the National Marine Fisheries Service proposed some steelhead stocks for listing; stocks originating above Willamette Falls were not included. Other sensitive fish species in the basin include the Oregon chub and bull trout. Oregon chub was listed as Federally endangered in November 1993, and bull trout is a candidate species for listing under the ESA. Because of their regional and national significance, these fish species are given high priority with respect to current and future management activities in the Willamette Basin.

Five alternative scenarios reflecting changed system conditions from the base (without project or No Action) condition will be developed by varying the emphasis of the beneficial uses of the system. Beneficial uses to emphasize in addition to the purposes of flood protection, navigation, irrigation, and power include acquatic habitat and fish life-cycle needs, water quality, reservoir and downstream recreation, municipal and industrial water supply, and possibly other uses. The alternative of no action, i.e., continuing to operate the system as presently done, will also be considered. This includes development of a scenario reflecting the greatest net National Economic Development benefits (NED plan). The alternative scenarios will be analyzed in the feasibility study to determine physical, economic, environmental, cultural, and other possible benefits and effects from the base condition.

The EIS scoping process will commence in October 1996 with the issuance of a scoping letter. Federal, State and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the significant issues relating to the potential effects of the alternatives. Potentially significant issues to be addressed in the EIS include: Effects on populations and habitat of anadromous and resident fish, especially threatened, endangered, or sensitive species; Effects on wetlands and flood plains; Effects on power production, recreation, irrigation, water quality.

Other environmental review and consultation requirements to be addressed in the EIS include:

(1) Clean Water Act of 1977, as amended

(2) Fish and Wildlife Coordination Act

(3) Endangered Species Act of 1973, as amended

(4) Cultural Resources Acts

(5) Executive Order 11988, Floodplain Management

(6) Executive Order 11990, Protection of Wetlands

A series of scoping meetings/public workshops are planned for February–March 1997 at various locations in the basin. Other public workshops will be held periodically throughout the study. Times and locations of these public workshops will be announced via the media. The DEIS is scheduled to be published and distributed for public review and comment in October 1999.

Dated: September 13, 1996.

Howard B. Jones,

Chief, Planning and Engineering Division.

[FR Doc. 96–24551 Filed 9–24–96; 8:45 am]

BILLING CODE 3710–AR–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT96–93–000]

Equitrans L.P.; Notice of Refund Report

September 19, 1996.

Take notice that on August 6, 1996, Equitrans, L.P. (Equitrans) tendered for filing with the Commission a refund report in compliance with the Commission's February 22, 1995 Order Approving Refund Methodology for 1994 Overcollections in Docket No. RP95–124–000.

Equitrans states that on June 28, 1996, it received $226,304 refund from the Gas Research Institute (GRI), representing an overcollection of the 1995 GRI Tier 1 funding target level set for Equitrans by GRI. On July 18, 1996, in compliance with the Commission's Order, Equitrans states that it sent the GRI refund, pro rata, to its eligible firm shippers based on amounts paid through GRI surcharges during 1995.

Equitrans states that copies of its refund report have been served on all affected parties and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before September 26, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24499 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–291–002]

Mid Louisiana Gas Company; Notice of Amendment to Compliance Filing

September 19, 1996.

Take notice that on September 16, 1996, Mid Louisiana Gas Company (MIDLA) tendered for filing certain schedules to amend its compliance

filing dated September 9, 1996 in FERC Docket No. RP96–291–001. MIDLA asserts that the purpose of this filing is to further comply with the Commission's order issued August 23, 1996 in Docket No. RP96–291–000.

MIDLA states that the instant filing is tendered in order to furnish further detail of breakdown of costs on Schedules H–1(1)(a) and H–1(1)(b).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24500 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–331–002]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 19, 1996.

Take notice that on September 16, 1996, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective September 1, 1996:

Third Revised Sheet No. 16
Third Revised Sheet No. 29
Second Revised Sheet No. 30
First Revised Sheet No. 65N
Third Revised Sheet No. 74
First Revised Sheet No. 83
Second Revised Sheet No. 94
Original Sheet No. 94A
Second Revised Sheet No. 105
First Revised Sheet No. 125
Third Revised Sheet No. 131D
Third Revised Sheet No. 131M
Second Revised Sheet No. 131N
First Revised Sheet No. 131R.04
Second Revised Sheet No. 131V
Second Revised Sheet No. 131W
First Revised Sheet No. 131CC.05
First Revised Sheet No. 182
First Revised Sheet No. 183
First Revised Sheet No. 183A
Second Revised Sheet No. 206
Third Revised Sheet No. 207
Substitute Fourth Revised Sheet No. 211

National Fuel states that this filing is made in compliance with the Commission's order of August 30, 1996 (the Order), which accepted, subject to conditions, the tariff sheets containing new GT&C Section 17.2, which addresses the provision of transportation and storage services at negotiated rates. National Fuel states that the Order required it to file tariff language clarifying whether Section 17.2 is intended to encompass a formula rate. National Fuel states that the instant filing satisfies that condition, and addresses other changes that, according to the Order, must be made to its tariff before it may charge negotiated rates. These include references to negotiated rates in each rate schedule and the tariff sections concerning scheduling and curtailment, and the elimination of language in Section 17.2 which provided for the calculation of a negotiated rate on a one hundred percent load factor basis for purposes of capacity allocation.

National Fuel states that it is serving copies of the filing to its firm customers and interested state commissions. Copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24502 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–329–001]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Tariff

September 19, 1996.

Take notice that on September 16, 1996, NorAm Gas Transmission (NGT) tendered for filing to be part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sixth Revised Sheet No. 13.

NGT states that the purpose of this filing is to comply with the Commission order of August 30, 1996, which required NGT to correct the pagination of its tariff sheet filed in Docket No. RP96–329. Additionally, NGT states it includes in the filing an explanation of how the adjustment to NGT's billing determinants in subject filing conform to the Commission's policy regarding whether discounts could be used in determining billing adjustments established in *Natural Gas Pipeline Company of America*, 69 FERC ¶ 61,209 (1994).

NGT stated that copies of its filings have been mailed to all of its affected customers and the State Commissions of Arkansas, Louisiana, Oklahoma and Texas.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24501 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–576–001]

Northwest Pipeline Corporation; Notice of Petition To Amend

September 19, 1996.

Take notice that on September 16, 1996, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP96–576–001 a petition to amend its application filed in Docket No. CP96–576–000 to delete that portion of the application proposing to construct approximately 2.775 miles of 10-inch pipeline and metering facilities in Clark County, Washington, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Northwest indicates that, in the original filing submitted under the prior notice procedure in Docket No. CP96–576–000, it proposed to construct and operate approximately 2.775 miles of 10-inch pipeline and a new metering station in Clark County, Washington to implement a firm transportation service

for Washington Water Power Company (Water Power) for redelivery to a new electrical plant built by the Public Utility District No. 1 of Clark County. It is also stated that Northwest Natural Gas Company protested the filing citing Northwest's failure to address impacts on firm service reliability and an interruption of the facilities reimbursement provision of Northwest's tariff. Northwest states that the protest was not withdrawn during the 30-day reconciliation period provided under 157.205(g) of the Commission's Regulations. It is indicated that, because of adverse cost impacts to be caused by a construction delay, Northwest, at the request of Water Power and Inland Pacific Energy Services, elected to construct the facilities under the auspices of Section 311 of the Natural Gas Policy Act of 1978.

Northwest has amended its application to delete its request to construct the above-mentioned facilities. No other changes are proposed in Northwest's original application.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 10, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24496 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–775–000]

Northwest Pipeline Corporation; Notice of Application for Authorization To Abandon Facilities In-Place

September 19, 1996.

Take notice that, on September 9, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed an abbreviated application in Docket No. CP96–775–000, pursuant to section 7(b) of the Natural Gas Act and §§ 157.7(a) and 157.18 of the Commission's Regulations, for authorization to abandon (in-place) approximately 4,525 feet of its 10-inch diameter South Seattle Lateral and adjacent 10-inch diameter lateral loop line, in King County, Washington, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

In 1993, Northwest retired (in-place) and replaced a total of approximately 4,700 feet of the South Seattle Lateral and adjacent loop line. Northwest subsequently filed an application, in Docket No. CP96–501–000, for authorization to abandon, remove and replace the 175-foot segments of its South Seattle Lateral and adjacent loop line that crossed Madsen Creek. In an order issued August 7, 1996 (76 FERC ¶ 62,095), the Commission approved the abandonment of the two 175-foot pipeline segments and directed Northwest to file an application to abandon the remaining 4,525 feet of its South Seattle Lateral and adjacent loop line.

Northwest now proposes to abandon (in-place) the remaining 4,525 feet of retired and replaced South Seattle Lateral and adjacent loop line. Northwest states that, since no pipeline facilities will be removed, there will be no costs associated with the proposed abandonment. Northwest further states that, since the affected pipeline segments have already been replaced, no services will be abandoned as a result of this proposal. The subject pipeline segments are located in Sections 26 and 27, Township 23 North, Range 5 East, in King County, Washington.

Any person desiring to be heard or to make any protests with reference to said application should on or before October 10, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24497 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–312–002]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 19, 1996.

Take notice that on September 16, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, to be effective September 1, 1996:

Substitute Third Revised Sheet No. 98
Substitute First Revised Sheet No. 109
Substitute Fourth Revised Sheet No. 128
Substitute Original Sheet No. 128A
Substitute Third Revised Sheet No. 154
Substitute Original Sheet No. 154A
Substitute Second Revised Sheet No. 155E
Substitute Third Revised Sheet No. 162
Substitute Fourth Revised Sheet No. 167
Substitute Third Revised Sheet No. 168
Substitute Third Revised Sheet No. 173
Substitute Original Sheet No. 173A
Substitute First Revised Sheet No. 219
Substitute Second Revised Sheet No. 226
Substitute Original Sheet No. 226A
First Revised Sheet No. 405A
First Revised Sheet No. 405B
First Revised Sheet No. 405C

Tennessee states that the revised tariff sheets are being submitted to comply with the Commission's August 30, 1996 order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of

the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24561 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–783–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

September 19, 1996.

Take notice that on September 12, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP96–783–000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate metering and appurtenant facilities in Slope County, North Dakota, to be used as a back-up fuel source to Bear Paw Energy, Inc. (Bear Paw). Williston Basin makes such request, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Williston Basin proposes to construct and operate a meter, valves, and piping, within a receipt point metering station that was authorized under Section 2.55(d) of the Commission's Regulations, to allow Williston Basin to make deliveries of up to 2,000 equivalent Dt of natural gas per day to Bear Paw, for Bear Paw's use as a back-up or emergency source of fuel for its field compression facilities. Williston Basin indicates that it will transport the volumes to Bear Paw, under the applicable provisions of its FERC Gas Tariff, Second Revised Volume No. 1.

It is stated that the addition of the proposed facilities will have no significant effect on Williston Basin's peak day or annual requirements, and that the volumes to be delivered are within the certificated entitlements of the customer. The project is estimated to cost approximately $23,000 and Williston Basin states that Bear Paw will reimburse Williston Basin for said project cost.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24498 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–634–003, et al.]

Florida Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 18, 1996.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER95–634–003]

Take notice that on September 3, 1996, Florida Power Corporation tendered for filing its refund report in compliance with the Commission's July 19, 1996, order in this proceeding.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Vitol Gas & Electric, L.L.C., Citizens Lehman Power Sales, Wickford Energy Marketing, Energy Resource Management Corp., International Utility Consultants Inc., NFR Power Inc.

[Docket Nos. ER94–155–014, ER94–1685–008, ER95–1415–001, ER96–358–001, ER96–594–002, ER96–1122–001, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 19, 1996, Vitol Gas & Electric, L.L.C. filed certain information as required by the Commission's January 14, 1994 order in Docket No. ER94–155–000.

On August 22, 1996, Citizens Lehman Power Sales filed certain information as required by the Commission's February 2, 1995 order in Docket No. ER94–1685–000.

On August 28, 1996, Wickford Energy Marketing filed certain information as required by the Commission's October 25, 1995 order in Docket No. ER94–1415–000.

On September 3, 1996, Energy Resource Management Corp. filed certain information as required by the Commission's December 20, 1995 order in Docket No. ER96–358–000.

On August 19, 1996, International Utility Consultants Inc. filed certain information as required by the Commission's February 9, 1996 order in Docket No. ER96–594–000.

On August 28, 1996, NFR Power Inc. filed certain information as required by the Commission's April 2, 1996 order in Docket No. ER96–1121–000.

3. Florida Power Corporation

[Docket No. ER95–941–001]

Take notice that on September 3, 1996, Florida Power Corporation tendered for filing its refund report in the above-referenced docket.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket No. ER96–2407–000]

Take notice that on September 11, 1996, Western Resources, Inc. (Western Resources) on behalf of Kansas Gas and Electric Company (KGE) tendered for filing an amendment to Western Resources, July 15, 1996, filing in this docket consisting of a revised short-term participation power service agreement between KGE and the City of Girard, Kansas. The agreement is proposed to be effective July 1, 1996 through October 31, 1996.

Western Resources states that the revision is to clarify the transmission service pricing that is associated with the participation power service.

Copies of the filing were served upon the City of Girard, Kansas and Kansas Corporation Commission.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER96–2413–000]

Take notice that on September 11, 1996, Northeast Utilities Service Company (NUSCO), on behalf of the Northeast Utilities Companies (The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Holyoke Power and

Electric Company) filed supplemental information requested by FERC staff in their review of the filing under this docket.

The information provided includes the Connecticut Corporate Business tax rate, the projected 12 cp load of CMEEC's customer and information on sales to CMEEC under FERC Rate Schedule CL&P 547.

NUSCO renews its request that the rate schedule become effective on July 16, 1996, and seeks waiver of the Commission's notice requirements and any applicable Commission Regulations. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreement and the affected state utility commissions.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Interstate Power Company

[Docket No. ER96–2529–000]

Take notice that on August 28, 1996, Interstate Power Company (IPW) tendered for filing an amendment to add the effective date to the filing for the Transmission Service Agreement between IPW and Dairyland Power Cooperative (Dairyland). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Dairyland.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Great Bay Power Corporation

[Docket No. ER96–2595–000]

Take notice that on September 13, 1996, Great Bay Power Corporation tendered for filing an amended summary of activity for the quarter ending June 30, 1995.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Electric Company

[Docket No. ER96–2826–000]

Take notice that on August 26, 1996, Pennsylvania Electric Company tendered for filing Supplement Nos. 1 and 19 for its service to Tri-County Rural Electric Cooperative, Inc. and Valley Rural Electric Cooperative, Inc.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER96–2976–000]

Take notice that on September 12, 1996, Southwestern Electric Power Company (SWEPCO) submitted an unexecuted Service Agreement, dated September 6, 1996, with WestPlains Energy-Colorado (WPE-Colorado) establishing WPE-Colorado as a customer under the terms of SWEPCO's Coordination Sales Tariff CST–1 (CST–1 Tariff); and eight unexecuted Service Agreements, each dated August 1, 1996, establishing Destec Energy, Inc. (Destec), Vitol Gas & Electric L.L.C. (Vitol), Missouri Public Service (Missouri), WestPlains Energy-Kansas (WPE-Kansas), Acquila Energy Marketing (Acquila), Western Power Services, Inc. (Western), Coral Energy Resources, L.P. (Coral) and Calpine Power Services Company (Calpine) as customers under the CST–1 Tariff.

SWEPCO requests an effective date of September 6, 1996 for the agreement with WPE-Colorado and of August 13, 1996 for the agreements with the other eight customers. Accordingly, SWEPCO seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WPE-Colorado, Destec, Vitol, Missouri, WPE-Kansas, Acquila, Western, Coral, Calpine, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Oklahoma

[Docket No. ER96–2977–000]

Take notice that on September 12, 1996, Public Service Company of Oklahoma (PSO) submitted an unexecuted Service Agreement, dated September 6, 1996, with WestPlains Energy-Colorado (WPE-Colorado) establishing WPE-Colorado as a customer under the terms of PSO's Coordination Sales Tariff CST–1 (CST–1 Tariff); and eight unexecuted Service Agreements, each dated August 1, 1996, establishing Destec Energy, Inc. (Destec), Vitol Gas & Electric L.L.C. (Vitol), Missouri Public Service (Missouri), WestPlains Energy-Kansas (WPE-Kansas), Acquila Energy Marketing (Acquila), Western Power Services, Inc. (Western), Coral Energy Resources, L.P. (Coral), and Calpine Power Services Company (Calpine) as customers under the CST–1 Tariff.

PSO requests an effective date of September 6, 1996 for the agreement with WPE-Colorado and of August 13, 1996 for the agreements with the other eight customers. Accordingly, PSO seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WPE-Colorado, Destec, Vitol, Missouri, WPE-Kansas, Acquila, Western, Coral, Calpine and the Oklahoma Corporation Commission.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER96–2978–000]

Take notice that on September 12, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing agreements to provide non-firm transmission service to CNG Power Services Corporation, and Morgan Stanley Capital Group Inc., pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's regulations such that the agreements can be made effective as of September 12, 1996.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER96–2979–000]

Take notice that on September 12, 1996, New England Power Company filed Service Agreements and Certificates of Concurrence with Southern Energy Marketing, Inc. under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER96–2980–000]

Take notice that on September 12, 1996, New England Power Company filed Service Agreements and Certificates of Concurrence with AIG Trading Corporation under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Power Company

[Docket No. ER96–2981–000]

Take notice that on September 12, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Calpine Power Services Company (Calpine). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Calpine non-firm point-to-point transmission

service under its Pro Forma Open Access Transmission Tariff.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Power Company

[Docket No. ER96–2982–000]

Take notice that on September 12, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Florida Power & Light Company (FP&L). Duke states that the TSA sets out the transmission arrangements under which Duke will provide FP&L non-firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Power Company

[Docket No. ER96–2983–000]

Take notice that on September 12, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Florida Power & Light Company (FP&L). Duke states that the TSA sets out the transmission arrangements under which Duke will provide FP&L from point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Sierra Pacific Power Company

[Docket No. ER96–2984–000]

Take notice that on September 12, 1996, Sierra Pacific Power Company (Sierra), tendered for filing, pursuant to Section 205 of the Federal Power Act and 18 CFR Part 35, an Electric Service Agreement between Sierra and Plumas Sierra Rural Electric Cooperative (Plumas).

Sierra asserts that the filing has been served on Plumas and on the regulatory commissions of Nevada and California.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. KEYSPAN Energy Services, Inc.

[Docket No. ER96–2985–000]

Take notice that on September 12, 1996, KEYSPAN Energy Services, Inc. (KEYSPAN), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 385.205, and 18 CFR 35.12 of the Commission's Regulations an Application for Blanket Approval of Rate Schedule For Future Power Sales at Market-Based Rates and Waivers and Preapprovals of Certain Commission Regulations for KEYSPAN's Initial Rate Schedule FERC No. 1.

KEYSPAN intends to engage in electric power and energy transactions as a power marketer. In these transactions, KEYSPAN proposes to charge market-based rates, mutually agreed upon by the parties. All sales and purchases will be at arms-length.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER96–2986–000]

Take notice that on September 12, 1996, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with Commonwealth Edison Company under its CS–1 Coordination Sales Tariff.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Pool

[Docket No. ER96–2987–000]

Take notice that on September 12, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by USGen Power Services, L.P. (USGen). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit USGen to join the over 100 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make USGen a Participant in the Pool. NEPOOL requests an effective date of November 1, 1996 for commencement of participation in the Pool by USGen.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Interstate Power Company

[Docket No. ER96–2989–000]

Take notice that on September 13, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Luverne Municipal Utilities (Luverne). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Luverne.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER96–2990–000]

Take notice that on September 13, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Wisconsin Electric Power Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 29, 1996.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Energy 2, Inc.

[Docket No. ER96–2361–000]

Take notice that on September 11, 1996, Energy 2, Inc. tendered for filing a letter withdrawing its application filed on July 10, 1996 in this docket.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. MidAmerican Energy Company

[Docket No. ER96–2998–000]

Take notice that on September 16, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission Firm Transmission Service Agreements with Minnesota Power & Light Company (Minnesota Power & Light) dated August 29, 1996, and Morgan Stanley Capital Group, Inc. (Morgan Stanley) dated September 9, 1996, and Non-Firm Transmission Service Agreements with Minnesota Power & Light dated August 29, 1996, TransCanada Power Corp. (TransCanada) dated September 5, 1996, and Morgan Stanley dated September 9, 1996, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of August 29, 1996, for the Agreements with Minnesota Power & Light, September 5, 1996 for the Agreement with TransCanada, and September 9, 1996 for the Agreements with Morgan Stanley, and accordingly seeks waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Minnesota Power & Light, TransCanada, Morgan Stanley,

the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Arizona Public Service Company

[Docket No. ER96–2999–000]

Take notice that on September 16, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity: Edison Source Energy, Inc.

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Wisconsin Power and Light Company

[Docket No. ER96–3000–000]

Take notice that on September 16, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated September 12, 1996, establishing Western Power Services, Inc. as a point-to-point transmission customer under the terms of WP&L's Transmission Tariff.

WP&L requests an effective date of September 12, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Wisconsin Public Service Corporation

[Docket No. ER96–3001–000]

Take notice that on September 16, 1996, Wisconsin Public Service Corporation, tendered for filing an executed agreement with Illinova Power Marketing, Inc. under its CS–1 Coordination Sales Tariff.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Electric Power Company

[Docket No. ER96–3002–000]

Take notice that on September 16, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Western Power Services, Inc. (Western). The Transmission Service Agreement allows Western to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 7, under Docket No. OA96–196.

Wisconsin Electric requests an effective date of sixty days from the filing date. Copies of the filing have been served on Western, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Wisconsin Public Service Corporation

[Docket No. ER96–3003–000]

Take notice that on September 16, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Illinova Power Marketing, Inc. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC asks that the agreement become effective on the date of execution by WPSC.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24562 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RM96–1–000]

Standards for Business Practices of Interstate Natural Gas Pipelines; Notice of Filing

September 19, 1996.

Take notice that the Gas Industry Standards Board, by letter filed on September 12, 1996, notified the Commission that it has granted to members of the public a nonexclusive license for the duration of copyright to reproduce certain materials (filed with the letter) for their use, and subsequent reproduction, in facilitating and monitoring regulatory compliance and related purposes.

The Materials consist of excerpts from the GISB Manuals (all denominated Version 1.0, June 14, 1996) entitled ''Nominations Related Standards,'' Flowing Gas Related Standards,'' ''Invoicing Related Standards,'' and ''Capacity Release Standards'' (collectively, the ''Manuals'') containing the text of the principles, definitions and standards incorporated by reference in section 284.10(b)(1) of the Commission's Rules, and the related ''data dictionaries.'' This license is limited to the Materials themselves and does not extend to other portions of the Manuals.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24495 Filed 9–24–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5615–2]

Enforcement and Compliance Roundtable Meeting

October 17–19, 1996

San Antonio, Texas

Sponsored by National Environmental Justice Advisory Council and U.S. Environmental Protection Agency.

Purpose

The National Environmental Justice Advisory Council (NEJAC) and the U.S. Environmental Protection Agency are sponsoring an Enforcement and Compliance Roundtable to provide an opportunity for environmental justice stakeholders (e.g. community grassroots groups, individuals, business and industry, federal, tribal, state and local governments, etc.) to exchange ideas on how communities can assume a more interactive role in environmental enforcement and compliance activities. There will be a site tour in the afternoon and an enforcement and compliance training session in the evening for any interested party on Thursday, October, 17.

The NEJAC is a federal advisory committee to the EPA. The NEJAC has identified enforcement and compliance as issues of high concern in environment justice communities across the country.

Roundtable Topics

Supplemental Environmental Projects/Consent Decrees, Environmental Restoration and Cleanup Projects, Performance Partnership Agreements/Memorandum of Agreements, NEPA Guidance Process/ EIS-Cultural & Social Analysis, Title VI and Enforcement, Targeting/Inspections, Community Monitoring, Community Notification/Complaint Resolution.

Who Should Attend

Grassroots/community-based organizations, individuals, federal, tribal, state and local environmental agencies, business and industry, universities/schools, media/press, environmental organizations, etc.

Registration

Registration is required for the Roundtable Meeting as well as the Site Tour and Training Session. For more information and to register, call 1–800–981–8113. There is *no registration fee.*

Dated: September 19, 1996.

Robert J. Knox,

Acting, Director, Office of Environmental Justice.

[FR Doc. 96–24590 Filed 9–24–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–340102; FRL 5394–2]

Notice of Receipt of Requests for Amendments to Delete uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on December 24, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 15 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before December 24, 1996 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000004–00165	Methoxychlor 25% Insecticide	Methoxychlor	Mosquito control, live stock and agricultural premises
000070–00165	Kill-Ko 10% Sevin Dust	Carbaryl	Tobacco
000100–00456	D.Z.N. Lawn & Garden Insect Control	Diazinon	Almonds & walnuts (all states except CA), figs, caneberries (all states except CA, OR, & WA), dried beans & peas, filberts, celery, pecans, apples, pears, grapefruit, lemons, oranges
000100–00460	D.Z.N. Diazinon 50W	Diazinon	Almonds & walnuts (all states except CA), caneberries (all states except CA, OR, WA), figs, filberts, citrus, olives, pecans, dried beans & peas, including soybeans, celery, watercress, alfalfa, clover, trefoil, field corn (except seed treatment, cotton, cowpeas, lespedeza, peanuts, sorghum, tobacco, Bermudagrass, pasture grass & grass forage, rangeland
00100–00461	D.Z.N. Diazinon AG500	Diazinon	Almonds & walnuts (all states except CA), caneberries (all states except CA, OR, WA), citrus, figs, filberts, olives, pecans, dried beans & peas including soybeans, celery, alfalfa, clover, field corn, cotton, guar, sorghum, tobacco, cowpeas, lespedeza, peanuts, rangeland, pasture grass, forage grasses & Bermudagrass
000100–00469	D.Z.N. Diazinon 14G	Diazinon	Dried beans & peas including soybeans, field corn, peanuts, sorghum, tobacco, alfalfa, clover, cowpeas, lespedeza, lawns

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000100–00524	D.Z.N. Diazinon MG–87%	Diazinon	Alfalfa, almonds (all states except CA), asparagus, bananas (import tolerance only), Bermudagrass, caneberries (all states except CA, OR, WA), citrus, clover, cotton, cowpeas, dried beans & peas, field corn (except seed treatment), figs, filberts, grass forage, guar, kiwifruit (import tolerance only), lawns, lespedeza, sorghum, trefoil, tobacco, watercress (HI only)
000100–00528	D.Z.N. 6000 Lawn & Garden Insect Control	Diazinon	Dried peas & beans
000241–00356	Triforine Technical	Triforine	Greenhouse uses
000557–01613	Vigoro Sevin 5% Dust	Carbaryl	Dogs and cats uses
000655–00003	Prentox Cube Powder	Rotenone	Terrestrial food crops, terrestrial non-food, greenhouse (vegetables & ornamentals), indoor residential, domestic outdoor (household & ornamental), commercial/ industrial, livestock
000655–00069	Prentox Cube Resins	Rotenone	Terrestrial food crops, terrestrial non-food, greenhouse (vegetables & ornamentals), indoor residential, outdoor domestic (household & ornamental), commercial/ industrial, livestock
001386–00451	5% Sevin Dust	Carbaryl	Pet animals
005481–00132	Cryolilte 93 Insecticide	Cryolite	Apples, peaches, pears, mustard greens, turnips, radishes, cranberries, strawberries
067517–00024	Facefly Bomb	Dipropyl isocinchomeronate; *N*-Octyl bicycloheptene dicarboximide; Piperonylbutoxide; Pyrethrins	Dairy & beef cattle

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000070	SureCo, Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
000100	Ciba-Geigy Corp., Ciba Crop Protection, P.O. Box 18300, Greensboro, NC 27419.
000241	American Cyanamid Co., Agricultural Research Div., P.O. Box 400, Princeton, NJ 08543.
000557	Vigoro Industries, P.O. Box 512, Winter Haven, FL 33882.
000655	Prentiss Inc., 21 Vernon Street, C.B. 2000, Floral Park, NY 11001.
001386	Universal Cooperatives, Inc., P.O. Box 460, 7801 Metro Parkway, Minneapolis, MN 55440.
005481	Amvac Chemical Corp., c/o H.R. McLane, Inc., 7210 Red Road, Suite 206, Miami, FL 33143.
067517	PM Resources, Inc., 13001 St. Charles Rock Road, Bridgeton, MO 63044.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 4, 1996.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–24054 Filed 9–24–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL 5613–7]

Notice of Data Availability and Public Meeting on Environmental Release Descriptions Supporting the Hazardous Wastes Characteristics Scoping Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is making available for public comment a draft report entitled ''Hazardous Waste Characteristics Scoping Study: Environmental Release Descriptions.'' This report focuses on environmental contamination resulting from the management of non-hazardous wastes and presents the criteria for the selection of data, the methodologies used to gather the data, and the initial results. This report was prepared in support of a study being conducted by the Agency under a May 17, 1996 consent agreement with the Environmental Defense Fund to investigate if there are gaps in coverage in the existing hazardous waste characteristics under the Resource Conservation and Recovery Act (RCRA), as well as the nature and extent of such gaps. The overall study is referred to as the ''Hazardous Waste Characteristic Scoping Study.'' EPA is making this draft report on environmental releases available for written comment and also intends to hold a one-half day public meeting to accept comments.

DATES: Copies of EPA's draft report on environmental release descriptions will be available from the RCRA docket after September 25, 1996. Written comments on this report must be received by October 15, 1996.

The public meeting will be held on Thursday, October 10, 1996, from 1:00 p.m. to 5:00 p.m.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–ERDA–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–ERDA–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

The draft report ''Hazardous Waste Characteristics Scoping Study: Environmental Release Descriptions'' and any public comments are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the ''Supplementary Information'' section.

The public meeting will be held at the Hyatt Crystal City, 2799 Jefferson Davis Highway, Arlington, VA, 22202.

FOR FURTHER INFORMATION CONTACT: Persons needing further information regarding this notice or registering for the public meeting should contact Tamara M. Irvin, Office of Solid Waste, 5304W, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460; telephone: (703)–308–8807; e-mail: irvin.tamara @epamail.epa.gov. General questions about the regulatory requirements under RCRA should be directed to the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460; telephone: toll-free at 800–424–9346, TDD: 800–553–7672, or locally at 703–412–9810.

SUPPLEMENTARY INFORMATION: Under the Resource Conservation and Recovery Act Section 3001, EPA is charged with defining which solid wastes are hazardous by identifying the characteristics of hazardous waste and listing particular hazardous wastes. The current hazardous characteristics are ignitability, corrosivity, reactivity, and toxicity. As stated above, EPA has entered into a consent decree with the Environmental Defense Fund to conduct a study of the potential gaps in these characteristics. As part of this study, EPA has collected data on human health or environmental damages from the management of non-hazardous waste. The purpose of the public meeting is to provide a forum for public comment and discussion on the results of these data. Specifically, EPA is requesting comment on: (1) How current waste management practices relate to those in place at the time the contamination occurred, (2) Whether the selection criteria used to collect the damage case data were appropriate, (3) Whether the analyses captured the majority of damage case information relevant to the purposes of the study, and (4) How these data could be used to identify potential gaps in the RCRA hazardous waste characteristics.

For a paper copy of the report ''Hazardous Waste Characteristics Scoping Study: Environmental Release Descriptions'', please contact the RIC at the address in the **ADDRESSES** section of this notice. The report is also available in electronic format on the Internet. Follow these instructions to access the report.

WWW: http://www.epa.gov

Gopher: gopher.epa.gov/epaoswer

Dial-up: 919 558–0335

If you are using the gopher or direct dial-up; once you are connected to the EPA Public Access Server, look for the report in the following directory: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Hazardous Waste Identification.

FTP: ftp.epa/gov

Login: anonymous

Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the location described **ADDRESSES** above.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the Federal Register or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form.

Oral statements will be scheduled on a first-come-first-served basis by calling the number listed under **FOR FURTHER INFORMATION CONTACT**. All statements or written comments will be part of the public record and will be considered in the development of the study.

Dated: September 16, 1996.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 96–24592 Filed 9–24–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5616–1]

Amendment to Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Add names to the list of settling parties.

SUMMARY: The September 3, 1996, notice concerning the proposed settlement at the Marco of Iota Superfund Site in Iota, Louisiana (61 FR 46463) included a list of settling parties. Five parties who agreed to settle were inadvertently excluded from the list. The excluded settlers are:

Analytical and Environmental Testing
Ardoin Distributors
Arkansas Department of Health
Ashland Oil, Inc. (Ashland Petroleum Company Division of Ashland Inc.)
B&M Operating Co., Inc.

Any comments regarding the additional parties must be submitted on or before October 3, 1996.

FOR FURTHER INFORMATION CONTACT: Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713.

Dated: September 19, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–24724 Filed 9–24–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL 5615–3]

Proposed Settlement of Administrative Order on Consent

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed *De Minimis* Settlement.

SUMMARY: U.S. EPA is proposing to settle a claim under Section 122 of CERCLA with Beloit College, a *de minimis* potentially responsible party, for past costs and costs that will be incurred during removal and remedial activities at the MIG DeWane Landfill Site in Belvidere, Illinois. The Respondent has agreed to pay a total of $30,000.00. The money will be used to reimburse the U.S. EPA for past costs and oversight costs which will be incurred during actions to be taken at the site. This action is being taken to settle all liability related to the MIG DeWane Landfill Site with this Respondent pursuant to the intent of Section 122(g) of CERCLA, as amended.

DATES: Comments on this proposed settlement must be received within thirty (30) days from the publication of this notice.

ADDRESSES: A copy of the proposed settlement is available at the following address for review: (It is recommended that you telephone Richard Clarizio at (312) 886–0559, before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Office of Superfund, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Comments on the proposed settlement should be addressed to: (Please submit an original and three copies, if possible.) Richard Clarizio, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard (CS–29A), Chicago, Illinois 60604–3590, (312) 886–0559.

FOR FURTHER INFORMATION CONTACT: Richard Clarizio, Office of Regional Counsel, at (312) 886–0559.

SUPPLEMENTARY INFORMATION: The MIG DeWane Landfill received industrial and solid wastes, some of which contained hazardous substances, from 1969 to 1988. The Landfill was placed on the National Priorities List on August 30, 1990. U.S. EPA entered into an administrative consent order for removal action at the Site with various responsible parties on March 29, 1991. U.S. EPA entered into a de minimis settlement with other responsible parties on May 15, 1995. Beloit College was not a signatory to either agreement.

Beloit College is a potentially responsible party who may have arranged for disposal of hazardous substances at the MIG DeWane Landfill Site. Beloit College's share of the waste delivered to the site is believed not to exceed 0.2% of the total waste delivered to the site.

A 30-day period, beginning on the date of publication of today's notice, is open pursuant to Section 122(I) of CERCLA for comments on the proposed settlement with this Respondent.

William E. Muno,

Director, Superfund Division, U.S. Environmental Protection Agency, Region V.

[FR Doc. 96–24586 Filed 9–24–96; 8:45 am]

BILLING CODE 6560–50–M

[OPPT–59355; FRL–5396–7]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–96–9. The test marketing conditions are described below.

DATES: This notice becomes effective September 18, 1996. Written comments will be received until October 10, 1996.

ADDRESSES: Written comments, identified by the docket number [OPPT–59355] and the specific TME number should be sent to: TSCA nonconfidential center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59355]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

FOR FURTHER INFORMATION CONTACT: Vera Stubbs, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447A, 401 M St. SW., Washington, DC 20460, (202) 260–5671; e-mail: Stubbs.vera@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–96–9. EPA has determined that test marketing of

the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

A notice of receipt of the application was not published in advance of approval. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–96–9. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–96–9

Date of Receipt: August 12, 1996. The extended comment period will close (insert date 15 days after date of publication in the Federal Register).

Applicant: The Clorox Company.

Chemical: (G) Heteromonocycle, 4-methyl-4-substituted-, methylsulfate.

Use: (G) Cleaner activator.

Production Volume: Confidential

Number of Customers: Confidential

Test Marketing Period: 12 Months. Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

A record has been established for this notice under docket number [OPPT-59355] (including comments and data submitted electronically a described above). A public version of this record, including printed versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA nonconfidential information center (NCIC), Rm. NEB–607, 401 M St., SW., Washington, DC 20460. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Test marketing exemption.

Dated: September 18, 1996.

Paul J. Campanella,

Chief, New Chemicals Branch Office of Pollution Prevention and Toxics.

[FR Doc. 96–24601 Filed 9–24–96; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL ELECTION COMMISSION

[Notice 1996–18]

Filing Dates for the Texas Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of Filing Dates for Special Elections.

SUMMARY: Texas has scheduled special elections on November 5 and December 10 based on an order by the U.S. District Court for the *Southern District of Texas in Vera et al.* v. *Bush et al.,* which redrew the boundaries, invalidated the results of primary and runoff elections, and ordered new elections in thirteen of the thirty U.S. Congressional Districts of Texas. The districts affected are: 3, 5, 6, 7, 8, 9, 18, 22, 24, 25, 26, 29, and 30.

Committees required to file reports in connection with the Special General Election on November 5 should file an October Quarterly Report on October 15; a Pre-General Report on October 24; a Post-General Report on December 5; and a Year-End Report on January 31, 1997. Committees required to file reports in connection with both the Special General and Special Runoff Election to be held on December 10, must file an October Quarterly Report; a Pre-General Report; a Pre-Runoff Report on November 29; and a consolidated Post-Runoff & Year-End Report on January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file an October Quarterly Report on October 15, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through September 30; and a 12-day Pre-General Report on October 24, with coverage dates from October 1 through October 16. If there is a majority winner, committees must also file a Post-General Report on December 5, with coverage dates from October 17 through November 25 and a Year-End Report on January 31, 1997, with coverage dates from November 26 through December 31, 1996.

In the event that no candidate receives a majority of the votes in the Special General Election, a Special Runoff Election will be held on December 10, 1996. All principal campaign committees of candidates in the Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file an October Quarterly Report on October 15, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through September 30; a 12-day Pre-General Report on October 24, with coverage dates from October 1 through October 16; a Pre-Runoff report on November 29, with coverage dates from October 17 through November 20; and a consolidated Post-Runoff & Year-End Report on January 9, 1997, with coverage dates from

November 21 through December 31, 1996.

If two elections are held, all principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election *only* shall file an October Quarterly Report on October 15, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through September 30; a 12-day Pre-General Report on October 24, with coverage dates from October 1 through October 16; and a Year-End Report on January 31, 1997, with coverage dates from October 17 through December 31, 1996.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on November 29, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through November 20, and a consolidated Post-Runoff & Year-End Report on January 9, 1997, with coverage dates from November 21 through December 31, 1996.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTIONS

Report	Close of Books [1]	Reg./cert. mailing date [2]	Filing date
I. If only the special general is held (11/05/96), committees must file:			
October Quarterly	09/30/96	10/15/96	10/15/96
Pre-General	10/16/96	10/21/96	10/24/96
Post-General	11/25/96	12/05/96	12/05/96
Year-End	12/31/96	01/31/97	01/31/97
II. If two elections are held, committees involved in the special general (11/05/96) and special runoff (12/10/96) must file:			
October Quarterly	09/30/96	10/15/96	10/15/96
Pre-General	10/16/96	10/21/96	10/24/96
Pre-Runoff	11/20/96	11/25/96	[3] 11/29/96
Post-Runoff & Year-End [4]	12/31/96	01/09/97	01/09/97
III. If two elections are held, committees involved in only the special general (11/05/96) must file:			
October Quarterly	09/30/96	10/15/96	10/15/96
Pre-General	10/16/96	10/21/96	10/24/96
Year-End	12/31/96	01/31/97	01/31/97
IV. All committees involved in the special runoff (12/10/96) only must file:			
Pre-Runoff	11/20/96	11/25/96	[3] 11/29/96
Post-Runoff & Year-End [4]	12/31/96	01/09/97	01/09/97

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] The date has been adjusted because the computed date would have fallen on a Federal holiday.
[4] Committees should filed a consolidated Post-Runoff and Year-End Report by the filing date of the Post-Runoff Report.

Dated: September 19, 1996.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 96–24486 Filed 9–24–96; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000050–63
Title: United States/Australia New Zealand Association
Parties:
Blue Star (North America) Limited
Columbus Line
Australia New Zealand Direct Line
Synopsis: This modification combines the geographic scopes of the U.S. Atlantic & Gulf/Australia-New Zealand Conference (Agreement No. 202–006200) and the Pacific Coast/Australia-New Zealand Tariff Bureau (Agreement No. 202–000050) and both restates and renames the Agreement the United States/Australia New Zealand Association.

Agreement No.: 232–011521–001
Title: Hanjin/Tricon Far East Services Slot Charter Agreement
Parties:
Hanjin Shipping Co., Ltd.
Cho Yang Shipping Co., Ltd.
DSR-Senator Lines GMBH
Synopsis: The proposed modification expands the scope of the Agreement to include ports in China.

Agreement No.: 203–011555
Title: Policies Services Agreement
Parties:
Atlantic Container Line AB
Hapag Lloyd AG
DSR-Senator Lines
POL-Atlantic
P&O Containers Limited
Cho Yang Shipping Co., Ltd.
Mediterranean Shipping Co.
Sea-Land Service, Inc.
Orient Overseas Container Line (UK) Ltd.
Evergreen Marine Corp. (Taiwan), Ltd.
Hanjin Shipping Co., Ltd.
A.P. Moller-Maersk Line

Nedlloyd Linjnen BV
Nippon Yusen Kaisha
Transportaction Maritima Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
Hyundai Merchant Marine Co., Ltd.
Tecomar, S.A. de C.V.

Synopsis: The proposed Agreement would permit the parties to establish a regional self-policing system in the trade between continental United States ports, and inland U.S. points via such ports, and ports and points in Europe, except Spain and Portugal. It would also permit them to cooperate voluntarily with regard to related service programs.

Agreement No.: 224–200178–004
Title: The Port Authority of New York and New Jersey and Carco, Inc., Marine Terminal Agreement
Parties:
The Port Authority of New York and New Jersey Carco, Inc.

Synopsis: The proposed modification provides for the payment of berth rental on all automobiles discharged to and from the Auto Marine Terminal.

Dated: September 19, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–24481 Filed 9–24–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 9, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Gustave W. Kerndt, and James Kerndt, Lansing, Iowa; to both retain 25.20 percent of the voting shares of Kerndt Bank Services, Inc., Lansing, Iowa, and thereby indirectly acquire Kerndt Brothers Savings Bank, Lansing, Iowa.

Board of Governors of the Federal Reserve System, September 19, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24569 Filed 9-24-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Prime Newco, Inc., Philadelphia, Pennsylvania; to be renamed Prime Bancor, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of First Sterling Bancorp, Inc., Devon, Pennsylvania, and thereby indirectly acquire First Sterling Bank, Devon, Pennsylvania.

In connection with this application Prime Newco, Inc., also has applied to acquire Prime Bank, Philadelphia, Pennsylvania, and thereby engage in operating a savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and to acquire Prime Abstract, Inc., Philadelphia, Pennsylvania, and thereby engage in real estate title abstracting pursuant to Board order, *The First National Company*, 81 Fed. Res. Bull. 805 (1995).

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Commerce Bancorp, Inc., Logan, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Nubanc Corp.(dba First Commerce Bank), Logan, Utah.

Board of Governors of the Federal Reserve System, September 19, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24567 Filed 9-24-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for

bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. The Royal Bank of Scotland Group plc, Edinburgh, Scotland; The Royal Bank of Scotland, plc, Edinburgh, Scotland; The Governor and Company of the Bank of Ireland, Dublin, Ireland; and Citizens Financial Group, Inc., Providence, Rhode Island; to acquire NYCE Corporation, Woodcliff Lake, New Jersey, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First State Bancshares of Blakely, Inc., Blakely, Georgia; to acquire First Southwest Bancorp, Inc., Donalsonville, Georgia, a thrift holding company, and thereby engage in opeating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 19, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24568 Filed 9-24-96; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 961–0004]

Time Warner Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a restructuring of the acquisition by Time Warner Inc. of Turner Broadcasting System, Inc., which are two of the country's largest cable programmers. Time Warner, Turner, TCI and its subsidiary Liberty Media Corp. have agreed to make a number of structural changes and to abide by certain restrictions designed to break down the entry barriers created by the proposed transaction.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or George Cary, FTC/H–374, Washington, D.C. 20580. (202) 326–2932 or 326–3741.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition of Turner Broadcasting System, Inc. (''Turner'') by Time Warner Inc. (''Time Warner''), and Tele-Communications, Inc.'s (''TCI'') and Liberty Media Corporation's (''LMC'') proposed acquisitions of interests in Time Warner, and it now appearing that Time Warner, Turner, TCI, and LMC, hereinafter sometimes referred to as ''proposed respondents,'' are willing to enter into an agreement containing an order to divest certain assets, and providing for other relief:

It is hereby agreed by and between proposed respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Time Warner is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 75 Rockefeller Plaza, New York, New York 10019.

2. Proposed respondent Turner is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at One CNN Center, Atlanta, Georgia 30303.

3. Proposed respondent TCI is a corporation organized, existing and doing business under and by virtue of the law of the State of Delaware, with its office and principal place of business located at 5619 DTC Parkway, Englewood, Colorado 80111.

4. Proposed respondent LMC is a corporation organized, existing and doing business under and by virtue of the law of the State of Delaware, with its office and principal place of business located at 8101 East Prentice Avenue, Englewood, Colorado 80111.

5. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint for purposes of this agreement and order only.

6. Proposed respondents waive:

(1) any further procedural steps;

(2) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(3) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(4) any claim under the Equal Access to Justice Act.

7. Proposed respondents shall submit (either jointly or individually), within sixty (60) days of the date this

agreement is signed by proposed respondents, an initial report or reports, pursuant to § 2.33 of the Commission's Rules, signed by the proposed respondents and setting forth in detail the manner in which the proposed respondents will comply with Paragraphs VI, VII and VIII of the order, when and if entered. Such report will not become part of the public record unless and until this agreement and order are accepted by the Commission for public comment.

8. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with a draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

9. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

10. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

11. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

12. Proposed respondents agree to be bound by all of the terms of the Interim Agreement attached to this agreement and made a part hereof as Appendix I, upon acceptance by the Commission of this agreement for public comment. Proposed respondents agree to notify the Commission's Bureau of Competition in writing, within 30 days of the date the Commission accepts this agreement for public comment, of any and all actions taken by the proposed respondents to comply with the Interim Agreement and of any ruling or decision by the Internal Revenue Service (''IRS'') concerning the Distribution of The Separate Company stock to the holders of the Liberty Tracking Stock within two (2) business days after service of the IRS Ruling.

13. The order's obligations upon proposed respondents are contingent upon consummation of the Acquisition.

Order

I

As used in this Order, the following definitions shall apply:

(A) ''Acquisition'' means Time Warner's acquisition of Turner and TCI's and LMC's acquisition of interest in Time Warner.

(B) ''Affiliated'' means having an Attributable Interest in a Person.

(C) ''Agent'' or ''Representative'' means a Person that is acting in a fiduciary capacity on behalf of a principal with respect to the specific conduct or action under review or consideration.

(D) ''Attributable Interest'' means an interest as defined in 47 C.F.R. 76.501 (and accompanying notes), as that rule read on July 1, 1996.

(E) ''Basic Service Tier'' means the Tier of video programming as defined in 47 C.F.R. 76.901(a), as that rule read on July 1, 1996.

(F) ''Buying Group'' or ''Purchasing Agent'' means any Person representing the interests of more than one Person distributing multichannel video programming that: (1) Agrees to be financially liable for any fees due pursuant to a Programming Service Agreement which it signs as a contracting party as a representative of its members, or each of whose members, as contracting parties, agrees to be liable for its portion of the fees due pursuant to the programming service agreement; (2) agrees to uniform billing and standardized contract provisions for individual members; and (3) agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(G) ''Carriage Terms'' means all terms and conditions for sale, licensing or delivery to an MVPD for a Video Programming Service and includes, but is not limited to, all discounts (such as for volume, channel position and Penetration Rate), local advertising availabilities, marketing, and promotional support, and other terms and conditions.

(H) ''CATV'' means a cable system, or multiple cable systems Controlled by the same Person, located in the United States.

(I) ''Closing Date'' means the date of the closing of the Acquisition.

(J) ''CNN'' means the Video Programming Service Cable News Network.

(K) ''Commission'' means the Federal Trade Commission.

(L) ''Competing MVPD'' means an Unaffiliated MVPD whose proposed or actual service area overlaps with the actual service area of a Time Warner CATV.

(M) ''Control,'' ''Controlled'' or ''Controlled by'' has the meaning set forth in 16 CFR 801.1 as that regulation read on July 1, 1996, except that Time Warner's 50% interest in Comedy Central (as of the Closing Date) and TCI's 50% interests in Bresnan Communications, Intermedia Partnerships and Lenfest Communications (all as of the Closing Date) shall not be deemed sufficient standing alone to confer Control over that Person.

(N) ''Converted WTBS'' means WTBS once converted to a Video Programming Service.

(O) ''Fully Diluted Equity of Time Warner'' means all Time Warner common stock actually issued and outstanding plus the aggregate number of shares of Time Warner common stock that would be issued and outstanding assuming the exercise of all outstanding options, warrants and rights (excluding shares that would be issued in the event a poison pill is triggered) and the

conversion of all outstanding securities that are convertible into Time Warner common stock.

(P) ''HBO'' means the Video Programming Service Home Box Office, including multiplexed versions.

(Q) ''Independent Advertising-Supported News and Information Video Programming Service'' means a National Video Programming Service (1) that is not owned, Controlled by, or Affiliated with Time Warner; (2) that is a 24-hour per day service consisting of current national, international, sports, financial and weather news and/or information, and other similar programming; and (3) that has national significance so that, as of February 1, 1997, it has contractual commitments to supply its service to 10 million subscribers on Unaffiliated MVPDs, or, together with the contractual commitments it will obtain from Time Warner, it has total contractual commitments to supply its service to 15 million subscribers. If no such Service has such contractual commitments, then Time Warner may choose from among the two Services with contractual commitments with Unaffiliated MVPDs for the largest number of subscribers.

(R) ''Independent Third Party'' means (1) a Person that does not own, Control, and is not Affiliated with or has a share of voting power, or an Ownership Interest in, greater than 1% of any of the following: TCI, LMC, or the Kearns-Tribune Corporation; or (2) a Person which none of TCI, LMC, or the TCI Control Shareholders owns, Controls, is Affiliated with, or in which any of them have a share of voting power, or an Ownership Interest in, greater than 1%. *Provided, however,* that an Independent Third Party shall not lose such status if, as a result of a transaction between an Independent Third Party and The Separate Company, such Independent Third Party becomes a successor to The Separate Company and the TCI Control Shareholders collectively hold an Ownership Interest of 5% or less and collectively hold a share of voting power of 1% or less in that successor company.

(S) ''LMC'' means Liberty Media Corporation, all of its directors, officers, employees, Agents, and Representatives, and also includes (1) all of its predecessors, successors, assigns, subsidiaries, and divisions, all of their respective directors, officers, employees, Agents, and Representatives, and the respective successors and assigns of any of the foregoing; and (2) partnerships, joint ventures, and affiliates that Liberty Media Corporation Controls, directly or indirectly.

(T) ''The Liberty Tracking Stock'' means Tele-Communications, Inc. Series A Liberty Media Group Common Stock and Tele-Communications, Inc. Series B Liberty Media Group Common Stock.

(U) ''Multichannel Video Programming Distributor'' or ''MVPD'' means a Person providing multiple channels of video programming to subscribers in the United States for which a fee is charged, by any of various methods including, but not limited to, cable, satellite master antenna television, multichannel multipoint distribution, direct-to-home satellite (C-band, Ku-band, direct broadcast satellite), ultra high-frequency microwave systems (sometimes called LMDS), open video systems, or the facilities of common carrier telephone companies or their affiliates, as well as Buying Groups or Purchasing Agents of all such Persons.

(V) ''National Video Programming Service'' means a Video Programming Service that is intended for distribution in all or substantially all of the United States.

(W) ''Ownership Interest'' means any right(s), present or contingent, to hold voting or nonvoting interest(s), equity interest(s), and/or beneficial ownership(s) in the capital stock of a Person.

(X) ''Penetration Rate'' means the percentage of Total Subscribers on an MVPD who receives a particular Video Programming Service.

(Y) ''Person'' includes any natural person, corporate entity, partnership, association, joint venture, government entity or trust.

(Z) ''Programming Service Agreement'' means any agreement between a Video Programming Vendor and an MVPD by which a Video Programming Vendor agrees to permit carriage of a Video Programming Service on that MVPD.

(AA) ''The Separate Company'' means a separately incorporated Person, either existing or to be created, to take the actions provided by Paragraph II and includes without limitation all of The Separate Company's subsidiaries, divisions, and affiliates Controlled, directly or indirectly, all of their respective directors, officers, employees, Agents, and Representatives, and the respective successors and assigns of any of the foregoing, other than any Independent Third Party.

(BB) ''Service Area Overlap'' means the geographic area in which a Competing MVPD's proposed or actual service area overlaps with the actual service area of a Time Warner CATV.

(CC) ''Similarly Situated MVPDs'' means MVPDs with the same or similar number of Total Subscribers as the Competing MVPD has nationally and the same or similar Penetration Rate(s) as the Competing MVPD makes available nationally.

(DD) ''TCI'' means Tele-Communications, Inc., all of its directors, officers, employees, Agents, and Representatives, and also includes (1) all of its predecessors, successors, assigns, subsidiaries, and divisions, all of their respective directors, officers, employees, Agents, and Representatives, and the respective successors and assigns of any of the foregoing; and (2) partnerships, joint ventures, and affiliates that Tele-Communications, Inc. Controls, directly or indirectly. TCI acknowledges that the obligations of subparagraphs (C)(6), (8)–(9), (D)(1)–(2) of Paragraph II and of Paragraph III of this order extend to actions by Bob Magness and John C. Malone, taken in an individual capacity as well as in a capacity as an officer or director, and agrees to be liable for such actions.

(EE) ''TCI Control Shareholders'' means the following Persons, individually as well as collectively: Bob Magness, John C. Malone, and the Kearns-Tribune Corporation, its Agents and Representatives, and the respective successors and assigns of any of the foregoing.

(FF) ''TCI's and LMC's Interest in Time Warner'' means all the Ownership Interest in Time Warner to be acquired by TCI and LMC, including the right of first refusal with respect to Time Warner stock to be held by R. E. Turner, III, pursuant to the Shareholders Agreement dated September 22, 1995 with LMC or any successor agreement.

(GG) ''TCI's and LMC's Turner-Related Businesses'' means the businesses conducted by Southern Satellite Systems, Inc., a subsidiary of TCI which is principally in the business of distributing WTBS to MVPDs.

(HH) ''Tier'' means a grouping of Video Programming Services offered by an MVPD to subscribers for one package price.

(II) ''Time Warner'' means Time Warner Inc., all of its directors, officers, employees, Agents, and Representatives, and also includes (1) all of its predecessors, successors, assigns, subsidiaries, and divisions, including, but not limited to, Turner after the Closing Date, all of their respective directors, officers, employees, Agents, and Representatives, and the respective successors and assigns of any of the foregoing; and (2) partnerships, joint ventures, and affiliates that Time Warner Inc. Controls, directly or

indirectly. Time Warner shall, except for the purposes of definitions OO and PP, include Time Warner Entertainment Company, L.P., so long as it falls within this definition.

(JJ) ''Time Warner CATV'' means a CATV which is owned or Controlled by Time Warner. ''Non-Time Warner CATV'' means a CATV which is not owned or Controlled by Time Warner. Obligations in this order applicable to Time Warner CATVs shall not survive the disposition of Time Warner's Control over them.

(KK) ''Time Warner National Video Programming Vendor'' means a Video Programming Vendor providing a National Video Programming Service which is owned or Controlled by Time Warner. Likewise, ''Non-Time Warner National Video Programming Vendor'' means a Video Programming Vendor providing a National Video Programming Service which is not owned or Controlled by Time Warner.

(LL) ''TNT'' means the Video Programming Service Turner Network Television.

(MM) ''Total Subscribers'' means the total number of subscribers to an MVPD other than subscribers only to the Basic Service Tier.

(NN) ''Turner'' means Turner Broadcasting System, Inc., all of its directors, officers, employees, Agents, and Representatives, and also includes (1) all of its predecessors, successors (except Time Warner), assigns (except Time Warner), subsidiaries, and divisions; and (2) partnerships, joint ventures, and affiliates that Turner Broadcasting System, Inc., Controls, directly or indirectly.

(OO) ''Turner Video Programming Services'' means each Video Programming Service owned or Controlled by Turner on the Closing Date, and includes (1) WTBS, (2) any such Video Programming Service and WTBS that is transferred after the Closing Date to another part of Time Warner (including TWE), and (3) any Video Programming Service created after the Closing Date that Time Warner owns or Controls that is not owned or Controlled by TWE, for so long as the Video Programming Service remains owned or Controlled by Time Warner.

(PP) ''Turner-Affiliated Video Programming Services'' means each Video Programming Service, whether or not satellite-delivered, that is owned, Controlled by, or Affiliated with Turner on the Closing Date, and includes (1) WTBS, (2) any such Video Programming Service and WTBS that is transferred after the Closing Date to another part of Time Warner (including TWE), and (3) any Video Programming Service created after the Closing Date that Time Warner owns, Controls or is Affiliated with that is not owned, Controlled by, or Affiliated with TWE, for so long as the Video Programming Service remains owned, Controlled by, or affiliated with Time Warner.

(QQ) ''TWE'' means Time Warner Entertainment Company, L.P., all of its officers, employees, Agents, Representatives, and also includes (1) all of its predecessors, successors, assigns, subsidiaries, divisions, including, but not limited to, Time Warner Cable, and the respective successors and assigns of any of the foregoing, but excluding Turner; and (2) partnerships, joint ventures, and affiliates that Time Warner Entertainment Company, L.P., Controls, directly or indirectly.

(RR) ''TWE's Management Committee'' means the Management Committee established in Section 8 of the Admission Agreement dated May 16, 1993, between TWE and U S West, Inc., and any successor thereof, and includes any management committee in any successor agreement that provides for membership on the management committee for non-Time Warner individuals.

(SS) ''TWE Video Programming Services'' means each Video Programming Service owned or Controlled by TWE on the Closing Date, and includes (1) any such Video Programming Service transferred after the Closing Date to another part of Time Warner and (2) any Video Programming Service created after the Closing Date that TWE owns or Controls, for so long as the Video Programming Service remains owned or Controlled by TWE.

(TT) ''TWE-Affiliated Video Programming Services'' means each Video Programming Service, whether or not satellite-delivered, that is owned, Controlled by, or Affiliated with TWE, and includes (1) any such Video Programming Service transferred after the Closing Date to another part of Time Warner and (2) any Video Programming Service created after the Closing Date that TWE owns or Controls, or is Affiliated with, for so long as the Video Programming Service remains owned, Controlled by, or Affiliated with TWE.

(VV) ''Unaffiliated MVPD'' means an MVPD which is not owned, Controlled by, or Affiliated with Time Warner.

(WW) ''United States'' means the fifty states, the District of Columbia, and all territories, dependencies, or possessions of the United States of America.

(XX) ''Video Programming Service'' means a satellite-delivered video programming service that is offered, alone or with other services, to MVPDs in the United States. It does not include pay-per-view programming service(s), interactive programming service(s), over-the-air television broadcasting, or satellite broadcast programming as defined in 47 C.F.R. 76.1000(f) as that rule read on July 1, 1996.

(YY) ''Video Programming Vendor'' means a Person engaged in the production, creation, or wholesale distribution to MVPDs of Video Programming Services for sale in the United States.

(ZZ) ''WTBS'' means the television broadcast station popularly known as TBS Superstation, and includes any Video Programming Service that may be a successor to WTBS, including Converted WTBS.

II

It is ordered that:

(A) TCI and LMC shall divest TCI's and LMC's Interest in Time Warner and TCI's and LMC's Turner-Related Businesses to The Separate Company by:

(1) combining TCI's and LMC's Interest in Time Warner Inc. and TCI's and LMC's Turner-Related Businesses in The Separate Company;

(2) distributing The Separate Company stock to the holders of Liberty Tracking Stock (''Distribution''); and

(3) using their best efforts to ensure that The Separate Company's stock is registered or listed for trading on the Nasdaq Stock Market or the New York Stock Exchange or the American Stock Exchange.

(B) TCI and LMC shall make all regulatory filings, including, but not limited to, filings with the Federal Communications Commission and the Securities and Exchange Commission that are necessary to accomplish the requirements of Paragraph II(A).

(C) TCI, LMC, and The Separate Company shall ensure that:

(1) The Separate Company's by-laws obligate The Separate Company to be bound by this order and contain provisions ensuring compliance with this order;

(2) The Separate Company's board of directors at the time of the Distribution are subject to the prior approval of the Commission;

(3) The Separate Company shall, within six (6) months of the Distribution, call a shareholder's meeting for the purpose of electing directors;

(4) No member of the board of directors of The Separate Company, both at the time of the Distribution and pursuant to any election now or at any time in the future, shall, at the time of his or her election or while serving as

a director of The Separate Company, be an officer, director, or employee of TCI or LMC or shall hold, or have under his or her direction or Control, greater than one-tenth of one percent (0.1%) of the voting power of TCI and one-tenth of one percent (0.1%) of the Ownership Interest in TCI or greater than one-tenth of one percent (0.1%) of the voting power of LMC and one-tenth of one percent (0.1%) of the Ownership Interest in LMC;

(5) No officer, director or employee of TCI or LMC shall concurrently serve as an officer or employee of The Separate Company. *Provided further, that* TCI or LMC employees who are not TCI Control Shareholders or directors or officers of either Tele-Communications, Inc. or Liberty Media Corporation may provide to The Separate Company services contemplated by the attached Transition Services Agreement;

(6) The TCI Control Shareholders shall promptly exchange the shares of stock received by them in the Distribution for shares of one or more classes or series of convertible preferred stock of The Separate Company that shall be entitled to vote only on the following issues on which a vote of the shareholders of The Separate Company is required: a proposed merger; consolidation or stock exchange involving The Separate Company; the sale, lease, exchange or other disposition of all or substantially all of The Separate Company's assets; the dissolution or winding up of The Separate Company; proposed amendments to the corporate charter or bylaws of The Separate Company; proposed changes in the terms of such classes or series; or any other matters on which their vote is required as a matter of law (except that, for such other matters, The Separate Company and the TCI Control Shareholders shall ensure that the TCI Control Shareholders' votes are apportioned in the exact ratio as the votes of the rest of the shareholders);

(7) No vote on any of the proposals listed in subparagraph (6) shall be successful unless a majority of shareholders other than the TCI Control Shareholders vote in favor of such proposal;

(8) After the Distribution, the TCI Control Shareholders shall not seek to influence, or attempt to control by proxy or otherwise, any other Person's vote of The Separate Company stock;

(9) After the Distribution, no officer, director or employee of TCI or LMC, or any of the TCI Control Shareholders shall communicate, directly or indirectly, with any officer, director, or employee of The Separate Company. *Provided, however, that* the TCI Control Shareholders may communicate with an officer, director or employee of The Separate Company when the subject is one of the issues listed in subparagraph 6 on which TCI Control Shareholders are permitted to vote, except that, when a TCI Control Shareholder seeks to initiate action on a subject listed in subparagraph 6 on which the TCI Control Shareholders are permitted to vote, the initial proposal for such action shall be made in writing. *Provided further, that* this provision does not apply to communications by TCI or LMC employees who are not TCI Control Shareholders or directors or officers of either Tele-Communications, Inc. or Liberty Media Corporation in the context of providing to The Separate Company services contemplated by the attached Transition Services Agreement or to communications relating to the possible purchase of services from TCI's and LMC's Turner-Related Businesses;

(10) The Separate Company shall not acquire or hold greater than 14.99% of the Fully Diluted Equity of Time Warner. Provided, however, that, if the TCI Control Shareholders reduce their collective holdings in The Separate Company to no more than one-tenth of one percent (0.1%) of the voting power of The Separate Company and one-tenth of one percent (0.1%) of the Ownership Interest in The Separate Company or reduce their collective holdings in TCI and LMC to no more than one-tenth of one percent (0.1%) of the voting power of TCI and one-tenth of one percent (0.1%) of the Ownership Interest in TCI and one-tenth of one percent (0.1%) of the voting power of LMC and one-tenth of one percent (0.1%) of the Ownership Interest in LMC, then The Separate Company shall not be prohibited by this order from increasing its holding of Time Warner stock beyond that figure; and

(11) The Separate Company shall not acquire or hold, directly or indirectly, any Ownership Interest in Time Warner that is entitled to exercise voting power except (a) a vote of one-one hundredth (1/100) of a vote per share owned, voting with the outstanding common stock, with respect to the election of directors and (b) with respect to proposed changes in the charter of Time Warner Inc. or of the instrument creating such securities that would (i) adversely change any of the terms of such securities or (ii) adversely affect the rights, power, or preferences of such securities. Provided, however, that any portion of The Separate Company's stock in Time Warner that is sold to an Independent Third Party may be converted into voting stock of Time Warner. Provided, further, that, if the TCI Control Shareholders reduce their collective holdings in The Separate Company to no more than one-tenth of one percent (0.1%) of the voting power of The Separate Company and one-tenth of one percent (0.1%) of the Ownership Interest in The Separate Company or reduce their collective holdings in both TCI and LMC to no more than one-tenth of one percent (0.1%) of the voting power of TCI and one-tenth of one percent (0.1%) of the Ownership Interest in TCI and one-tenth of one percent (0.1%) of the voting power of LMC and one-tenth of one percent (0.1%) of the Ownership Interest in LMC, The Separate Company's Time Warner stock may be converted into voting stock of Time Warner.

(D) TCI and LMC shall use their best efforts to obtain a private letter ruling from the Internal Revenue Service to the effect that the Distribution will be generally tax-free to both the Liberty Tracking Stock holders and to TCI under Section 355 of the Internal Revenue Code of 1986, as amended (''IRS Ruling''). Upon receipt of the IRS Ruling, TCI and LMC shall have thirty (30) days (excluding time needed to comply with the requirements of any federal securities and communications laws and regulations, provided that TCI and LMC shall use their best efforts to comply with all such laws and regulations) to carry out the requirements of Paragraph II (A) and (B). Pending the IRS Ruling, or in the event that TCI and LMC are unable to obtain the IRS Ruling,

(1) TCI, LMC, Bob Magness and John C. Malone, collectively or individually, shall not acquire or hold, directly or indirectly, an Ownership Interest that is more than the lesser of 9.2% of the Fully Diluted Equity of Time Warner or 12.4% of the actual issued and outstanding common stock of Time Warner, as determined by generally accepted accounting principles. Provided, however, that day-to-day market price changes that cause any such holding to exceed the latter threshold shall not be deemed to cause the parties to be in violation of this subparagraph; and

(2) TCI, LMC and the TCI Control Shareholders shall not acquire or hold any Ownership Interest in Time Warner that is entitled to exercise voting power except (a) a vote of one-one hundredth (1/100) of a vote per share owned, voting with the outstanding common stock, with respect to the election of directors and (b) with respect to proposed changes in the charter of Time Warner Inc. or of the instrument creating such securities that would (i) adversely change any of the terms of such

securities or (ii) adversely affect the rights, power, or preferences of such securities. Provided, however, that any portion of TCI's and LMC's Interest in Time Warner that is sold to an Independent Third Party may be converted into voting stock of Time Warner.

In the event that TCI and LMC are unable to obtain the IRS Ruling, TCI and LMC shall be relieved of the obligations set forth in subparagraphs (A), (B) and (C).

III

It is further ordered that

After the Distribution, TCI, LMC, Bob Magness and John C. Malone, collectively or individually, shall not acquire or hold, directly or indirectly, any voting power of, or other Ownership Interest in, Time Warner that is more than the lesser of 1% of the Fully Diluted Equity of Time Warner or 1.35% of the actual issued and outstanding common stock of Time Warner, as determined by generally accepted accounting principles (provided, however, that such interest shall not vote except as provided in Paragraph II(D)(2)), without the prior approval of the Commission. Provided, further, that day-to-day market price changes that cause any such holding to exceed the latter threshold shall not be deemed to cause the parties to be in violation of this Paragraph.

IV

It is further ordered that

(A) For six months after the Closing Date, TCI and Time Warner shall not enter into any new Programming Service Agreement that requires carriage of any Turner Video Programming Service on any analog Tier of TCI's CATVs.

(B) Any Programming Service Agreement entered into thereafter that requires carriage of any Turner Video Programming Service on TCI's CATVs on an analog Tier shall be limited in effective duration to five (5) years, except that such agreements may give TCI the unilateral right(s) to renew such agreements for one or more five-year periods.

(C) Notwithstanding the foregoing, Time Warner, Turner and TCI may enter into, prior to the Closing Date, agreements that require carriage on an analog Tier by TCI for no more than five years for each of WTBS (with the five year period to commence at the time of WTBS' conversion to Converted WTBS) and Headline News, and such agreements may give TCI the unilateral right(s) to renew such agreements for one or more five-year periods.

V

It is further ordered that

Time Warner shall not, expressly or impliedly:

(A) refuse to make available or condition the availability of HBO to any MVPD on whether that MVPD or any other MVPD agrees to carry any Turner-Affiliated Video Programming Service;

(B) condition any Carriage Terms for HBO to any MVPD on whether that MVPD or any other MVPD agrees to carry any Turner-Affiliated Video Programming Service;

(C) refuse to make available or condition the availability of each of CNN, WTBS, or TNT to any MVPD on whether that MVPD or any other MVPD agrees to carry any TWE-Affiliated Video Programming Service; or

(D) condition any Carriage Terms for each of CNN, WTBS, or TNT to any MVPD on whether that MVPD or any other MVPD agrees to carry any TWE-Affiliated Video Programming Service.

VI

It is further ordered that

(A) For subscribers that a Competing MVPD services in the Service Area Overlap, Time Warner shall provide, upon request, any Turner Video Programming Service to that Competing MVPD at Carriage Terms no less favorable, relative to the Carriage Terms then offered by Time Warner for that Service to the three MVPDs with the greatest number of subscribers, than the Carriage Terms offered by Turner to Similarly Situated MVPDs relative to the Carriage Terms offered by Turner to the three MVPDs with the greatest number of subscribers for that Service on July 30, 1996. For Turner Video Programming Services not in existence on July 30, 1996, the pre-Closing Date comparison will be to relative Carriage Terms offered with respect to any Turner Video Programming Service existing as of July 30, 1996.

(B) Time Warner shall be in violation of this Paragraph if the Carriage Terms it offers to the Competing MVPD for those subscribers outside the Service Area Overlap are set at a higher level compared to Similarly Situated MVPDs so as to avoid the restrictions set forth in subparagraph (A).

VII

It is further ordered that

(A) Time Warner shall not require a financial interest in any National Video Programming Service as a condition for carriage on one or more Time Warner CATVs.

(B) Time Warner shall not coerce any National Video Programming Vendor to provide, or retaliate against such a Vendor for failing to provide exclusive rights against any other MVPD as a condition for carriage on one or more Time Warner CATVs.

(C) Time Warner shall not engage in conduct the effect of which is to unreasonably restrain the ability of a Non-Time Warner National Video Programming Vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of Vendors in the selection, terms, or conditions for carriage of video programming provided by such Vendors.

VIII

It is further ordered that

(A) Time Warner shall collect the following information, on a quarterly basis:

(1) for any and all offers made to Time Warner's corporate office by a Non-Time Warner National Video Programming Vendor to enter into or to modify any Programming Service Agreement for carriage on an Time Warner CATV, in that quarter:

(a) the identity of the National Video Programming Vendor;

(b) a description of the type of programming;

(c) any and all Carriage Terms as finally agreed to or, when there is no final agreement but the Vendor's initial offer is more than three months old, the last offer of each side;

(d) any and all commitment(s) to a roll-out schedule, if applicable, as finally agreed to or, when there is no final agreement but the Vendor's initial offer is more than three months old, the last offer of each side;

(e) a copy of any and all Programming Service Agreement(s) as finally agreed to or, when there is no final agreement but the Vendor's initial offer is more than three months old, the last offer of each side; and

(2) on an annual basis for each National Video Programming Service on Time Warner CATVs, the actual carriage rates on Time Warner CATVs and

(a) the average carriage rates on all Non-Time Warner CATVs for each National Video Programming Service that has publicly-available information from which Penetration Rates can be derived; and

(b) the carriage rates on each of the fifty (50) largest (in total number of subscribers) Non-Time Warner CATVs for each National Video Programming Service that has publicly-available information from which Penetration Rates can be derived.

(B) The information collected pursuant to subparagraph (A) shall be

provided to each member of TWE's Management Committee on the last day of March, June, September and December of each year. *Provided, however,* that, in the event TWE's Management Committee ceases to exist, the disclosures required in this Paragraph shall be made to any and all partners in TWE; or, if there are no partners in TWE, then the disclosures required in this Paragraph shall be made to the Audit Committee of Time Warner.

(C) The General Counsel within TWE who is responsible for CATV shall annually certify to the Commission that it believes that Time Warner is in compliance with Paragraph VII of this order.

(D) Time Warner shall retain all of the information collected as required by subparagraph (A), including information on when and to whom such information was communicated as required herein in subparagraph (B), for a period of five (5) years.

IX

It is further ordered that

(A) By February 1, 1997, Time Warner shall execute a Programming Service Agreement with at least one Independent Advertising-Supported News and Information National Video Programming Service, unless the Commission determines, upon a showing by Time Warner, that none of the offers of Carriage Terms are commercially reasonable.

(B) If all the requirements of either subparagraph (A) or (C) are met, Time Warner shall carry an Independent Advertising-Supported News and Information Video Programming Service on Time Warner CATVs at Penetration Rates no less than the following:

(1) If the Service is carried on Time Warner CATVs as of July 30, 1996, Time Warner must make the Service available:

(a) By July 30, 1997, so that it is available to 30% of the Total Subscribers of all Time Warner CATVs at that time; and

(b) By July 30, 1999, so that it is available to 50% of the Total Subscribers of all Time Warner CATVs at that time.

(2) If the Service is not carried on Time Warner CATVs as of July 30, 1996, Time Warner must make the Service available:

(a) By July 30, 1997, so that it is available to 10% of the Total Subscribers of all Time Warner CATVs at that time;

(b) By July 30, 1999, so that it is available to 30% of the Total Subscribers of all Time Warner CATVs at that time; and

(c) By July 30, 2001, so that it is available to 50% of the Total Subscribers of all Time Warner CATVs at that time.

(C) If, for any reason, the Independent Advertising-Supported News and Information National Video Programming Service chosen by Time Warner ceases operating or is in material breach of its Programming Service Agreement with Time Warner at any time before July 30, 2001, Time Warner shall, within six months of the date that such Service ceased operation or the date of termination of the Agreement because of the material breach, enter into a replacement Programming Service Agreement with a replacement Independent Advertising-Supported News and Information National Video Programming Service so that replacement Service is available pursuant to subparagraph (B) within three months of the execution of the replacement Programming Service Agreement, unless the Commission determines, upon a showing by Time Warner, that none of the Carriage Terms offered are commercially reasonable. Such replacement Service shall have, six months after the date the first Service ceased operation or the date of termination of the first Agreement because of the material breach, contractual commitments to supply its Service to at least 10 million subscribers on Unaffiliated MVPDs, or, together with the contractual commitments it will obtain from Time Warner, total contractual commitments to supply its Service to 15 million subscribers; if no such Service has such contractual commitments, then Time Warner may choose from among the two Services with contractual commitments with Unaffiliated MVPDs for the largest number of subscribers.

X

It is further ordered that:

(A) Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of Paragraphs IV(A) and IX(A) of this order and, with respect to Paragraph II, until the Distribution, respondents shall submit jointly or individually to the Commission a verified written report or reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II, IV(A) and IX(A) of this order.

(B) One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondents shall file jointly or individually a verified written report or reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with each Paragraph of this order.

XI

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in respondents (other than this Acquisition) such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

XII

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request, respondents shall permit any duly authorized representative of the Commission:

1. Access, during regular business hours upon reasonable notice and in the presence of counsel for respondents, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this order; and

2. Upon five days' notice to respondents and without restraint or interference from it, to interview officers, directors, or employees of respondents, who may have counsel present, regarding such matters.

XIII

It is further ordered that this order shall terminate ten (10) years from the date this order becomes final.

Appendix I

Interim Agreement

This Interim Agreement is by and between Time Warner Inc. (''Time Warner''), a corporation organized, existing, and doing business under and by virtue of the law of the State of Delaware, with its office and principal place of business at New York, New York; Turner Broadcasting System, Inc. (''Turner''), a corporation organized, existing, and doing business under and by virtue of the law of the State of Georgia with its office and principal place of business at Atlanta, Georgia; Tele-Communications, Inc. (''TCI''), a corporation organized, existing, and doing business under and by virtue of

the law of the State of Delaware, with its office and principal place of business located at Englewood, Colorado; Liberty Media Corp. (''LMC''), a corporation organized, existing and doing business under and by virtue of the law of the State of Delaware, with its office and principal place of business located at Englewood, Colorado; and the Federal Trade Commission (''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 et seq.

Whereas Time Warner entered into an agreement with Turner for Time Warner to acquire the outstanding voting securities of Turner, and TCI and LMC proposed to acquire stock in Time Warner (hereinafter ''the Acquisition'');

Whereas the Commission is investigating the Acquisition to determine whether it would violate any statute enforced by the Commission;

Whereas TCI and LMC are willing to enter into an Agreement Containing Consent Order (hereafter ''Consent Order'') requiring them, inter alia, to divest TCI's and LMC's Interest in Time Warner and TCI's and LMC's Turner-Related Businesses, by contributing those interests to a separate corporation, The Separate Company, the stock of which will be distributed to the holders of Liberty Tracking Stock (''the Distribution''), but, in order to fulfill paragraph II(D) of that Consent Order, TCI and LMC must apply now to receive an Internal Revenue Service ruling as to whether the Distribution will be generally tax-free to both the Liberty Tracking Stock holders and to TCI under Section 355 of the Internal Revenue Code of 1986, as amended (''IRS Ruling'');

Whereas ''TCI's and LMC's Interest in Time Warner'' means all of the economic interest in Time Warner to be acquired by TCI and LMC, including the right of first refusal with respect to Time Warner stock to be held by R. E. Turner, III, pursuant to the Shareholders Agreement dated September 22, 1995 with LMC or any successor agreement;

Whereas ''TCI's and LMC's Turner-Related Businesses'' means the businesses conducted by Southern Satellite Systems, Inc., a subsidiary of TCI which is principally in the business of distributing WTBS to MVPDs;

Whereas ''Liberty Tracking Stock'' means Tele-Communications, Inc. Series A Liberty Media Group Common Stock and Tele-Communications, Inc. Series B Liberty Media Group Common Stock;

Whereas Time Warner, Turner, TCI, and LMC are willing to enter into a Consent Order requiring them, inter alia, to forego entering into certain new programming service agreements for a period of six months from the date that the parties close this Acquisition (''Closing Date''), but, in order to comply more fully with that requirement, they must cancel now the two agreements that were negotiated as part of this Acquisition: namely, (1) the September 15, 1995, program service agreement between TCI's subsidiary, Satellite Services, Inc. (''SSI''), and Turner and (2) the September 14, 1995, cable carriage agreement between SSI and Time Warner for WTBS (hereafter ''Two Programming Service Agreements'');

Whereas if the Commission accepts the attached Consent Order, the Commission is required to place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Rule 2.34 of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.34;

Whereas the Commission is concerned that if the parties do not, before this order is made final, apply to the IRS for the IRS Ruling and cancel the Two Programming Service Agreements, compliance with the operative provisions of the Consent Order might not be possible or might produce a less than effective remedy;

Whereas Time Warner, Turner, TCI, and LMC's entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal;

Whereas Time Warner, Turner, TCI, and LMC understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Time Warner, Turner, TCI, and LMC with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which this Agreement is annexed and made a part thereof, the parties agree as follows:

1. Within thirty (30) days of the date the Commission accepts the attached Consent Order for public comment, TCI and LMC shall apply to the IRS for the IRS Ruling.

2. On or before the Closing Date, Time Warner, Turner and TCI shall cancel the Two Programming Service Agreements.

3. This Agreement shall be binding when approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission has accepted for public comment from Time Warner Inc. (''Time Warner''), Turner Broadcasting System, Inc. (''Turner''), Tele-Communications, Inc. (''TCI''), and Liberty Media Corporation (''LMC'') (collectively ''the proposed respondents'') an Agreement Containing Consent Order (''the proposed consent order''). The Commission has also entered into an Interim Agreement that requires the proposed respondents to take specific action during the public comment period.

The proposed consent order is designed to remedy likely antitrust effects arising from Time Warner's acquisition of Turner as well as related transactions, including TCI's proposed ownership interest in Time Warner and long-term cable television programming service agreements between Time Warner and TCI for post-acquisition carriage by TCI of Turner programming.

II. Description of the Parties, the Acquisition and Related Transactions

Time Warner is a leading provider of cable networks and a leading distributor of cable television. Time Warner Entertainment (''TWE''), a partnership in which Time Warner holds the majority interest, owns HBO and Cinemax, two premium cable networks. Time Warner and Time Warner Cable, a subsidiary of TWE, are collectively the nation's second largest distributor of cable television and serve approximately 11.5 million cable subscribers or approximately 17 percent of U.S. cable television households.

Turner is a leading provider of cable networks. Turner owns the following ''marquee'' or ''crown jewel'' cable networks: Cable News Network (''CNN''), Turner Network Television (''TNT''), and TBS SuperStation (referred to as ''WTBS''). Turner also owns Headline News (''HLN''), Cartoon Network, Turner Classic Movies, CNN International USA and CNN Financial Network.

TCI is the nation's largest operator of cable television systems, serving approximately 27 percent of all U.S. cable television households. LMC, a subsidiary of TCI, is a leading provider of cable programming. TCI also owns interests in a large number of cable networks.

In September 1995, Time Warner and Turner entered into an agreement for Time Warner to acquire the approximately 80 percent of the outstanding shares in Turner that it does not already own. TCI and LMC have an approximately 24 percent existing interest in Turner. By trading their interest in Turner for an interest in Time Warner, TCI and LMC would acquire approximately a 7.5 percent interest in the fully diluted equity of Time Warner as well as the right of first refusal on the approximately 7.4 percent interest in Time Warner that R. E. Turner, III, chairman of Turner, would receive as a result of this acquisition. Although Time Warner has a 'poison pill' that would prevent TCI from acquiring more than a certain amount of stock without triggering adverse consequences, that poison pill would still allow TCI to acquire approximately 15 percent of the Fully Diluted Equity, and if the poison pill were to be altered or waived, TCI could acquire more than 15 percent of the fully diluted equity of Time Warner. Also in September 1995, Time Warner entered into two long-term mandatory carriage agreements referred to as the Programming Service Agreements (PSAs). Under the terms of these PSAs, TCI would be required, on virtually all of its cable television systems, to carry CNN, HLN, TNT and WTBS for a twenty-year period.

III. The Complaint

The draft complaint accompanying the proposed consent order and the Interim Agreement alleges that the acquisition, along with related transactions, would allow Time Warner unilaterally to raise the prices of cable television programming and would limit the ability of cable television systems that buy such programming to take responsive action to avoid such price increases. It would do so, according to the draft complaint, both through horizontal combination in the market for cable programming (in which Time Warner, after the acquisition, would control about 40% of the market) and through higher entry barriers into that market as a result of the vertical integration (by merger and contract) between Turner's programming interests and Time Warner's and TCI's cable distribution interests. The complaint alleges that TCI and Time Warner, respectively, operate the first and second largest cable television systems in the United States, reaching nearly half of all cable households; that Time Warner would gain the power to raise prices on its own and on Turner's programming unilaterally; that TCI's ownership interest in Time Warner and concurrent long term contractual obligations to carry Turner programming would undermine TCI's incentive to sign up better or less expensive non-Time Warner programming, preventing rivals to the combined Time Warner and Turner from achieving sufficient distribution to realize economies of scale and thereby to erode Time Warner's market power; that barriers to entry into programming and into downstream retail distribution markets would be raised; and that substantial increases in wholesale programming costs for both cable systems and alternative service providers—including direct broadcast satellite service and other forms of non-cable distribution—would lead to higher service prices and fewer entertainment and information sources for consumers.

The Commission has reason to believe that the acquisition and related transactions, if successful, may have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

IV. Terms of the Proposed Consent Order

The proposed consent order would resolve the alleged antitrust concerns by breaking down the entry barriers that would otherwise be erected by the transaction. It would do so by: (1) Requiring TCI to divest all of its ownership interests in Time Warner or, in the alternative, capping TCI's ownership of Time Warner stock and denying TCI and its controlling shareholders the right to vote any such Time Warner stock; (2) canceling the PSAs; (3) prohibiting Time Warner from bundling Time Warner's HBO with any Turner networks and prohibiting the bundling of Turner's CNN, TNT, and WTBS with any Time Warner networks; (4) prohibiting Time Warner from discriminating against rival Multichannel Video Programming Distributors (''MVPDs'') in the provision of Turner programming; (5) prohibiting Time Warner from foreclosing rival programmers from access to Time Warner's distribution; and (6) requiring Time Warner to carry a 24-hour all news channel that would compete with Turner's CNN. The following sections discuss the primary provisions of the proposed consent order in more detail.

A. TCI Will Divest Its Interest in Time Warner or Accept a Capped Nonvoting Interest. The divestiture provision of the proposed consent order (Paragraph II) requires TCI and LMC to divest their collective ownership of approximately 7.5 percent of the fully diluted shares in Time Warner - the amount they will obtain from Time Warner in exchange for their 24 percent ownership interest in Turner—to a different company (''The Separate Company'') that will be spun off by TCI and LMC. The stock of The Separate Company would be distributed to all of the shareholders of TCI's LMC subsidiary. Because that stock would be freely tradeable on an exchange, the ownership of The Separate Company would diverge over time from the ownership of the Liberty Media Tracking Stock (and would, at the outset, be different from the ownership of TCI). TCI would therefore breach its fiduciary duty to its shareholders if it forestalled programming entry that could benefit TCI as a cable system operator in order to benefit Time Warner's interests as a programmer.

In addition to the divestiture provisions ensuring that TCI will have no incentive to forgo its own best interests in order to favor those of Time Warner, the proposed consent order contains provisions to ensure that the transaction will not leave TCI or its management in a position to influence Time Warner to alter its own conduct in order to benefit TCI's interests. Absent restrictions in the consent order, the TCI Control Shareholders (John C. Malone, Bob Magness, and Kearns-Tribune Corporation) would have a controlling share of the voting power of The Separate Company. To prevent those shareholders from having significant influence over Time Warner's conduct, the proposed consent order contains the following provisions that will wall off the TCI Control Shareholders from influencing the officers, directors, and employees of The Separate Company and its day-to-day operations:

- The Commission must approve the initial board of directors of The Separate Company;
- Within six months of the distribution of The Separate Company's stock, the stockholders (excluding the TCI Control Shareholders) of The Separate Company must elect new directors;
- Members of the board of directors of The Separate Company are prohibited from serving as officers, directors, or employees of TCI or LMC, or holding or controlling greater than one-tenth of one percent (0.1%) of the ownership in or voting power of TCI or LMC;
- Officers, directors or employees of TCI or LMC are prohibited from concurrently serving as officers, directors, or employees of The Separate Company, with a narrow exception so that TCI or LMC employees may provide limited operational services to The Separate Company;

• The TCI Control Shareholders are prohibited from voting (other than a de minimis voting share necessary for tax purposes) any stock of The Separate Company to elect the board of directors or on other matters. There are limited exceptions for voting on major issues such as a proposed merger or sale of The Separate Company, the disposition of all or substantially all of The Separate Company's assets, the dissolution of The Separate Company, or proposed changes in the corporate charter or bylaw of The Separate Company. However, no vote on any of these excepted issues would be successful unless a majority of shareholders other than the TCI Control Shareholders vote in favor of such proposal;

• The TCI Control Shareholders are prohibited from seeking to influence, or attempting to control by proxy or otherwise, any other person's vote of The Separate Company's stock;

• Officers, directors, and employees of TCI or LMC, or any of the TCI Control Shareholders are prohibited from communicating with any officer, director, or employee of The Separate Company except on the limited matters on which they are permitted to vote. Further restrictions require that, in order for a TCI Control Shareholder to seek to initiate action on an issue on which they are entitled to vote, they must do so in writing;

• The Separate Company is prohibited from acquiring more than 14.99% of the fully diluted equity shares of Time Warner, with exceptions in the event that the TCI Control Shareholders sell their stock in The Separate Company or in TCI and LMC; and

• The Separate Company is prohibited from voting its shares (other than a de minimis voting share necessary for tax purposes) in Time Warner, except that such shares can become voting if The Separate Company sells them to an Independent Third Party or in the event that the TCI Control Shareholders sell their stock in The Separate Company or in TCI and LMC.

The Commission has reason to believe that the divestiture of TCI's and LMC's interest in Time Warner to The Separate Company is in the public interest. The required divestiture of the Time Warner stock by TCI and LMC and the ancillary restrictions outlined above are beneficial to consumers because (1) they would restore TCI's otherwise diminished incentives to carry cable programming that would compete with Time Warner's cable programming; and (2) they would eliminate TCI's and LMC's ability to influence the operations of Time Warner.

The proposed consent order also requires TCI and LMC to apply to the Internal Revenue Service (''IRS'') for a ruling that the divestiture of TCI's and LMC's interest in Time Warner to The Separate Company would be generally tax-free. Upon receipt of the IRS Ruling, TCI and LMC has thirty days to transfer its Time Warner stock to The Separate Company. After TCI and LMC divest this interest in Time Warner to The Separate Company, TCI, LMC, Magness and Malone are prohibited from acquiring any stock in Time Warner, above a collective de minimis nonvoting amount, without the prior approval of the Commission.

Pending the ruling by the IRS, or in the event that the TCI and LMC are unable to obtain such an IRS ruling, (1) TCI, LMC, John C. Malone and Bob Magness, collectively and individually, are capped at level no more than the lesser of 9.2 percent of the fully diluted equity of Time Warner or 12.4% of the actual issued and outstanding common stock of Time Warner, as determined by generally accepted accounting principles; and (2) TCI, LMC and the TCI Control Shareholders' interest in Time Warner must be nonvoting (other than a de minimis voting share necessary for tax purposes), unless the interest is sold to an Independent Third Party. This nonvoting cap is designed to restore TCI's otherwise diminished incentives to carry cable programming that would compete with Time Warner's cable programming as well as to prevent TCI from seeking to influence Time Warner's competitive behavior.

B. TCI's Long-Term Carriage Agreement With Turner Is Canceled. As part of the transaction, Time Warner and TCI entered into PSAs that required TCI to carry Turner programming for the next twenty years, at a price set at the lesser of 85% of the industry average price or the lowest price given to any distributor. According to the complaint, the PSAs would tend to prevent Time Warner's rivals from achieving sufficient distribution to threaten Time Warner's market power by locking up scarce TCI channel space for an extended period of time. By negotiating this arrangement as part of the Turner acquisition, and not at arms length, Time Warner was able to compensate TCI for helping to achieve this result. Under the Interim Agreement, TCI and Time Warner are obligated to cancel the PSAs. Following cancellation of the PSAs, there would be a six month ''cooling off'' period during which Time Warner and TCI could not enter into new mandatory carriage requirements on an analog tier for Turner programming.[1] This cooling off period will ensure that such agreements are negotiated at arm's length. Thereafter, the parties cannot enter into any agreement that would secure Time Warner guaranteed mandatory carriage rights on TCI analog channel capacity for more than five-year periods. This restriction would not prevent TCI from having renewal options to extend for additional five-year periods, but would prohibit Time Warner from obligating TCI to carry a Time Warner channel for more than five years. The only exceptions to the cooling off period for Time Warner/TCI carriage agreements would relate to WTBS and HLN on which there are no existing contracts. Any such carriage agreements for those services would also be limited to five years.

In requiring the cancellation of the PSAs and prescribing shorter renewal option periods, the Commission has not concluded that any such long-term programming agreements are anticompetitive in and of themselves or would violate the antitrust laws standing alone. Rather, the Commission has concluded that the PSAs are anticompetitive in the context of the entire transaction arising from the merger and ownership of Time Warner stock by TCI and in light of those two companies' significant market shares in both programming and cable service. The divestiture and rescission requirements would therefore sever complementary ownership and long-term contractual links between TCI and Time Warner. This would restore incentives for TCI, a cable operator serving nearly a third of the nation's cable households, to place non-Time Warner programming on its cable systems, in effect disciplining any market power resulting from a combination of Time Warner and Turner programming.

C. Time Warner is Barred From Bundling HBO with any Turner Programming and CNN, TNT and WTBS with Time Warner Programming. Paragraph V bars Time Warner from bundling HBO with Turner channels—that is, making HBO available, or available on more favorable terms, only if the purchaser agrees to take the Turner channels. Time Warner is also barred from bundling CNN, TNT, or

[1] Analog technology is currently used for cable programming distribution and places significant limitations on the addition of new channels. Digital technology, which is still in its infancy and not currently a competitive factor in video distribution, has the potential to expand capacity sixfold, thereby substantially alleviating capacity constraints on the digital tier.

WTBS with Time Warner channels. This provision applies to new programming as well as existing programming. This provision is designed to address concerns that the easiest way the combined firm could exert substantially greater negotiating leverage over cable operators is by combining all or some of such ''marquee'' services and offering them as a package or offering them along with unwanted programming. Because the focus of the provision is on seeking to prevent the additional market power arising from this combination of programming, this provision does not prevent bundling engaged in pre-merger—that is, Turner channels with Turner channels and pre- merger Time Warner channels with Time Warner channels. Rather, it is narrowly targeted at Time Warner's use of its newly-acquired stable of ''marquee'' channels to raise prices by bundling.

The Commission emphasizes that, in general, bundling often benefits customers by giving firms an incentive to increase output and serve buyers who would otherwise not obtain the product or service. The Commission, however, believes that, in the context of this transaction, the limited bar on bundling is a prudent measure that will prevent actions by Time Warner that are likely to harm competition.

D. Time Warner is Barred from Price Discrimination Against Rival MVPDs. Paragraph VI is designed to prevent Time Warner from using its larger stable of programming interests to disadvantage new entrants into the distribution of cable programs such as Direct Broadcast Services, wireless systems, and systems created by telephone companies. The complaint alleges that, as a programmer that does not own its own distribution, Turner pre- merger had no incentive to and did not generally charge significantly higher prices to new MVPD entrants compared to the prices offered to established MVPDs. Under the terms of Paragraph VI, the preacquisition range of pricing offered by Turner is used as a benchmark to prevent Time Warner from discriminating against the rival distributors of programming in its service areas, and Time Warner may not increase the range of pricing on Turner programming services between established MVPDs and new entrants any more than Turner had pre-merger. Because Time Warner's incentive to discriminate against MVPDs stems from an incentive to protect its own cable company from those in or entering its downstream distribution areas, this provision only covers competitors in Time Warner's distribution areas. Because the price charged by Time Warner as a programmer to Time Warner's cable systems is, to some extent, an internal transfer price, the proposed consent order uses as a benchmark the price charged to the three largest cable system operators nationwide rather than the price charged to Time Warner. This provision, therefore, compares the price charged to Time Warner's competitors in the overlap areas with the price charged to the three largest cable system operators, and asks whether the spread between the two is any greater than the pre-merger spread between a similarly situated MVPD and the three largest cable system operators. It thus focuses on the greater possibility for price discrimination against new MVPD entrants arising directly as a result of this merger. It both ensures that Time Warner's additional market power as a result of this merger does not result in higher prices to new MVPD entrants, while it narrowly protects only those new entrants that Time Warner may have an incentive to harm.

E. Conduct and Reporting Requirements Designed to Ensure that Time Warner Cable Does Not Discriminatorily Deny Carriage to Unaffiliated Programmers. The order has two main provisions designed to address concerns that this combination increases Time Warner's incentives to disadvantage unaffiliated programmers in making carriage decisions for its own cable company. Paragraph VII, drawn from statutory provisions in the 1992 Cable Act, is designed to prevent Time Warner from discriminating in its carriage decisions so as to exclude or substantially impair the ability of an unaffiliated national video programmer to enter into or to compete in the video programming market. The Commission views these provisions as working in tandem with the collection and reporting requirements contained in Paragraph VIII. Under that paragraph, Time Warner is required to collect and maintain information about programming offers received and the disposition of those offers as well as information comparing Time Warner cable systems' carriage rates to carriage rates on other MVPDs for national video programming services. Such information would be reported on a quarterly basis to the management committee of TWE. TWE's management committee includes representatives of U S West since U S West is a minority partner in TWE. TWE owns or operates all of Time Warner's cable systems. Because U S West's incentives would be to maximize return to TWE's cable systems rather than to Time Warner's wholly owned programming interests, it would have strong incentives to alert the Commission to actions by Time Warner that favored Time Warner's wholly owned programming interests at the expense of Time Warner cable systems' profitability. Such information would also be available for inspection independently by the Commission. Furthermore, Time Warner's General Counsel responsible for cable systems is required to certify annually to the Commission its compliance with the substantive prohibitions in Paragraph VII.

F. Time Warner Cable Agrees to Carry CNN Rival. Of the types of programming in which the post-merger Time Warner will have a leading position, the one with the fewest existing close substitutes is the all-news segment, in which CNN is by far the most significant player. There are actual or potential entrants that could in the future erode CNN's market power, but their ability to do so is partly dependent on their ability to secure widespread distribution. Without access to Time Warner's extensive cable holdings, such new entry may not be successful. Time Warner's acquisition of CNN gives it both the ability and incentive to make entry of competing news services more difficult, by denying them access to its extensive distribution system. To remedy this potential anticompetitive effect, Time Warner would be required to place a news channel on certain of its cable systems under Paragraph IX of the proposed agreement. The rate of roll-out and the final penetration rate is set at levels so as not to interfere with Time Warner's carriage of other programming. It is set at such a level that Time Warner may continue carrying any channel that it is now carrying, may add any channel that it is contractually committed to carry in the future, and may continue any plans it has to carry unaffiliated programming in the future. It limits only Time Warner's ability to give effect to its incentive to deny access even to a news channel that does not interfere with such commitments or plans. Time Warner has committed to achieve penetration of 50% of total basic subscribers by July 30, 1999, if it seeks to fulfill this provision by increasing carriage for an existing channel, or to achieve penetration of 50% of total basic subscribers by July 30, 2001, if it seeks to fulfill this provision by carrying a channel not currently carried by Time Warner. This shorter period is possible in the former case because, to the extent that Time Warner is already committed to carry the channel on a portion of Time Warner's systems, less additional

capacity would need to be found in order to achieve the required penetration. On the other hand, the longer period if a new news service is selected assures that an existing news service or other service need not be displaced to make room for the new service.

This provision was crafted so as to give Time Warner flexibility in choosing a new news channel, without undermining the Commission's competitive concern that the chosen service have the opportunity to become a strong competitor to CNN. To ensure that the competing news channel is competitively significant, the order obligates Time Warner to choose a news service that will have contractual commitments with unaffiliated cable operators to reach 10 million subscribers by February 1, 1997. Together with Time Warner's commitments required by the proposed order, such a service would have commitments for a total of approximately 15 million subscribers. In the alternative, Time Warner could take a service with a smaller unaffiliated subscriber base, if it places the service on more of its own systems in order to assure that the service's total subscribers would reach 15 million. In order to attract advertisers and become a competitive force, a news service must have a critical mass of subscribers. The thresholds contained in this order give Time Warner flexibility while ensuring that the service selected has enough subscribers to have a credible opportunity to become an effective competitor. The February 1, 1997, date was selected so as to give competitive news services an opportunity to achieve the required number of subscribers.

Accordingly, this provision should not interfere with Time Warner's plans to carry programming of its choosing or unduly involve the Commission in Time Warner's choice of a new service. It is analogous to divestiture of one channel on some cable systems and is thus far less burdensome to Time Warner than the typical antitrust remedy which would require that Time Warner divest some or all of cable systems in their entirety. The Commission, however, recognizes that this provision is unusual and invites public comment on the appropriateness of such a requirement.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 60 days for reception of comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the order contained in the agreement.

By accepting the consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or in any way to modify their terms.

Benjamin I. Berman,

Acting Secretary.

Separate Statement of Chairman Pitofsky, and Commissioners Steiger and Varney In the Matter of Time Warner Inc., File No. 961–0004

The proposed merger and related transactions among Time Warner, Turner, and TCI involve three of the largest firms in cable programming and delivery—firms that are actual or potential competitors in many aspects of their businesses. The transaction would have merged the first and third largest cable programmers (Time Warner and Turner). At the same time it would have further aligned the interests of TCI and Time Warner, the two largest cable distributors. Finally, the transaction as proposed would have greatly increased the level of vertical integration in an industry in which the threat of foreclosure is both real and substantial.[1] While the transaction posed complicated and close questions of antitrust enforcement, the conclusion of the dissenters that there was no competitive problem at all is difficult to understand.

Many of the concerns raised in the dissenting Commissioners statements are carefully addressed in the analysis to aid public comment. We write to clarify our views on certain specific issues raised in the dissents.

Product market. The dissenting Commissioners suggest that the product market alleged, ''the sale of Cable Television Programming Services to MVPDs (Multichannel Video Programming Distributors),'' cannot be sustained. The facts suggest otherwise. Substantial evidence, confirmed in the parties' documents and testimony, as well as documents and sworn statements from third-parties, indicated the existence of an all cable television market. Indeed, there was significant evidence of competitive interaction in terms of carriage, promotions and marketing support, subscriber fees, and channel position between different segments of cable programming, including basic and premium channel programming. Cable operators look to all types of cable programming to determine the proper mix of diverse content and format to attract a wide range of subscribers.

Although a market that includes both CNN and HBO may appear somewhat unusual on its face, the Commission was presented here with substantial evidence that MVPDs require access to certain ''marquee'' channels, such as HBO and CNN, to retain existing subscribers or expand their subscriber base. Moreover, we can not concur that evidence in the record supports Commissioner Azcuenaga's proposed market definition, which would segregate offerings into basic and premium cable programming markets.

Entry. Although we agree that entry is an important factor, we cannot concur with Commissioner Azcuenaga's overly generous view of entry conditions in this market. While new program channels have entered in the past few years, these channels have not become competitively significant. None of the channels that has entered since 1991 has acquired more than a 1% market share.

Moreover, the anticompetitive effects of this acquisition would have resulted from one firm's control of several marquee channels. In that aspect of the market, entry has proven slow and costly. The potential for new entry in basic services cannot guarantee against competitive harm. To state the matter simply, the launch of a new ''Billiards Channel,'' ''Ballet Channel,'' or the like will barely make a ripple on the shores of the marquee channels through which Time Warner can exercise market power.

Technology. Commissioner Azcuenaga also seems to suggest that the Commission has failed to recognize the impact of significant technological changes in the market, such as the emergence of new delivery systems such as direct broadcast satellite networks (''DBS'').[2] We agree that these alternative technologies may someday become a significant competitive force

[1] Both Congress and the regulators have identified problems with the effects of vertical foreclosure in this industry. See generally James W. Olson and Lawrence J. Spiwak, Can Short-term Limits on Strategic Vertical Restraints Improve Long-term Cable industry Market Performance?, 13 *Cardozo Arts & Entertainment Law Journal* 283 (1995). Enforcement action in this case is wholly consistent with the goals of Congress in enacting the 1992 Cable Act: providing greater access to programming and promoting competition in local cable markets.

[2] DBS providers are included as participants in the relevant product market.

in the market. Indeed, that prospect is one of the reasons the Commission has acted to prevent Time Warner from being able to disadvantage these competitors by discriminating in access to programming.

But to suggest that these technologies one day may become more widespread does not mean they currently are, or in the near future will be, important enough to defeat anticompetitive conduct. Alternative technologies such as DBS have only a small foothold in the market, perhaps a 3% share of total subscribers. Moreover, DBS is more costly and lacks the carriage of local stations. It seems rather unlikely that the emerging DBS technology is sufficient to prevent the competitive harm that would have arisen from this transaction.

Horizontal competitive effects. Although Commissioner Starek presents a lengthy argument on why we need not worry about the horizontal effects of the acquisition, the record developed in this investigation strongly suggests anticompetitive effects would have resulted without remedial action. This merger would combine the first and third largest providers of cable programming, resulting in a merged firm controlling over 40% of the market, and several of the key marquee channels including HBO and CNN. The horizontal concerns are strengthened by the fact that Time Warner and TCI are the two largest MVPDs in the country. The Commission staff received an unprecedented level of concern from participants in all segments of the market about the potential anticompetitive effects of this merger.

One of the most frequent concerns expressed was that the merger heightens the already formidable entry barriers into programming by further aligning the incentives of both Time Warner and TCI to deprive entrants of sufficient distribution outlets to achieve the necessary economies of scale. The proposed order addresses the impact on entry barriers as follows. First, the prohibition on bundling would deter Time Warner from using the practice to compel MVPDs to accept unwanted channels which would further limit available channel capacity to non-Time Warner programmers. Second, the conduct and reporting requirements in paragraphs VII and VIII provide a mechanism for the Commission to become aware of situations where Time Warner discriminates in handling carriage requests from programming rivals.

Third, the proposed order reduces entry barriers by eliminating the programming service agreements (PSAs), which would have required TCI to carry certain Turner networks until 2015, at a price set at the lower of 85% of the industry average price or the lowest price given to any other MVPD. The PSAs would have reduced the ability and incentives of TCI to handle programming from Time Warner's rivals. Channel space on cable systems is scarce. If the PSAs effectively locked up significant channel space on TCI, the ability of rival programmers to enter would have been harmed. This effect would have been exacerbated by the unusually long duration of the agreement and the fact that TCI would have received a 15% discount over the most favorable price given to any other MVPD. Eliminating the twenty-year PSAs and restricting the duration of future contracts between TCI and Time Warner would restore TCI's opportunities and incentives to evaluate and carry non-Time Warner programming.

We believe that this remedy carefully restricts potential anticompetitive practices, arising from this acquisition, that would have heightened entry barriers.

Vertical foreclosure. The complaint alleges that post-acquisition Time Warner and TCI would have the power to: (1) Foreclose unaffiliated programming from their cable systems to protect their programming assets; and (2) disadvantage competing MVPDs, by engaging in price discrimination. Commissioner Azcuenaga contends that Time Warner and TCI lack the incentives and the ability to engage in either type of foreclosure. We disagree.

First, it is important to recognize the degree of vertical integration involved. Post-merger Time Warner alone would control more than 40% of the programming assets (as measured by subscriber revenue obtained by MVPDs). Time Warner and TCI, the nation's two largest MVPDs, control access to about 44% of all cable subscribers. The case law have found that these levels of concentration can be problematic.[3]

Second, the Commission received evidence that these foreclosure threats were real and substantial. There was clearly reason to believe that this acquisition would increase the incentives to engage in this foreclosure without remedial action. For example, the launch of a new channel that could achieve marquee status would be almost impossible without distribution on either the Time Warner or TCI cable systems. Because of the economies of scale involved, the successful launch of any significant new channel usually requires distribution on MVPDs that cover 40–60% of subscribers.

Commissioner Starek suggests that we need not worry about foreclosure because there are sufficient number of unaffiliated programmers and MVPDs so that each can survive by entering into contracts. With all due respect, this view ignores the competitive realities of the marketplace. TCI and Time Warner are the two largest MVPDs in the U.S. with market shares of 27% and 17% respectively.[4] Carriage on one or both systems is critical for new programming to achieve competitive viability. Attempting to replicate the coverage of these systems by lacing together agreements with the large number of much smaller MVPDs is costly and time consuming.[5] The Commission was presented with evidence that denial of coverage on the Time Warner and TCI systems could further delay entry of potential marquee channels for several years.

TCI ownership of Time Warner. Commissioner Azcuenaga suggests that TCI's potential acquisition of a 15% interest in Time Warner, with the prospect of acquiring up to 25% without further antitrust review, does not pose any competitive problem. We disagree. Such a substantial ownership interest, especially in a highly concentrated market with substantial vertically interdependent relationships and high entry barriers, poses significant competitive concerns.[6] In particular, the interest would give TCI greater incentives to disadvantage programmer competitors of Time Warner; similarly it would increase Time Warner's incentives to disadvantage MVPDs that compete with TCI. The Commission's remedy would eliminate these incentives to act anticompetitively by making TCI's interest truly passive.

Efficiencies. Finally, Commissioner Azcuenaga seems to suggest that the acquisition may result in certain efficiencies in terms of ''more and better programming options'' and ''reduced

[3] See *Ash Grove Cement Co.* v. *FTC,* 577 F2d 1368 (9th Cir. 1978); *Mississippi River Corp.* v. *FTC,* 454 F.2d 1083 (8th Cri. 1972); *United States Steel Corp.* v. *FTC,* 426 F.2d 592 (6th Cir. 1970); see generally Herbert Hovenkamp, *Federal Antitrust Policy* § 9.4 (1994).

[4] They are substantially larger than the next largest MVPD, Continental, which has an approximately 6% market share.

[5] See *U.S. Department of Justice Horizontal Merger Guidelines,* ¶ 13,103 Trade Cas. (CCH) at 20,565–66, §§ 4.2 4,21(June 14, 1984), *incorporation in U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines,* ¶ 13,104 Trade Cas. (CCH) (Apirl 7, 1992).

[6] See *United States* v. *dupont de Nemours & Co.,* 353 U.S. 586 (1957); *F&M Schaefer Corp* v. *C. Schmidt & Sons, Inc.,* 597 F.2d 814, 818–19 (2d Cir. 1979); *Gulf & Western Indus.* v. *Great Atlantic & Pacific Tea Co., 476 F.2d 687 (2d Cir. 1973).*

transactions costs.'' There was little or no evidence presented to the Commission to suggest that these efficiencies were likely to occur.

Dissenting Statement of Commissioner Mary L. Azcuenaga in Time Warner Inc., File No. 961–0004

The Commission today accepts for public comment a proposed consent agreement to settle allegations that the proposed acquisition by Time Warner Inc. (Time Warner) of Turner Broadcasting System, Inc. (Turner), and related agreements with Tele-Communications, Inc. (TCI),[1] would be unlawful. Alleging that this transaction violates the law is possible only by abandoning the rigor of the Commission's usual analysis under Section 7 of the Clayton Act. To reach this result, the majority adopts a highly questionable market definition, ignores any consideration of efficiencies and blindly assumes difficulty of entry in the antitrust sense in the face of overwhelming evidence to the contrary. The decision of the majority also departs from more general principles of antitrust law by favoring competitors over competition and contrived theory over facts.

The usual analysis of competitive effects under the law, unlike the apparent analysis of the majority, would take full account of the swirling forces of innovation and technological advances in this dynamic industry. Unfortunately, the complaint and the underlying theories on which the proposed order is based do not begin to satisfy the rigorous standard for merger analysis that this agency has applied for years. Instead, the majority employs a looser standard for liability and a regulatory order that threatens the likely efficiencies from the transaction. Having found no reason to relax our standards of analysis for this case, I cannot agree that the order is warranted.

Product Market

We focus in merger analysis on the likelihood that the transaction will create or enhance the ability to exercise market power, *i.e.*, raise prices. The first step usually is to examine whether the merging firms sell products that are substitutes for one another to see if there is a horizontal competitive overlap. This is important in a case based on a theory of unilateral anticompetitive effects, as this one is, because according to the merger guidelines, the theory depends on the factual assumption that the products of the merging firms are the first and second choices for consumers.[2]

In this case, it could be argued that from the perspective of cable system operators and other multichannel video program distributors (MVPDs), who are purchasers of programming services, all network services are substitutes. This is the horizontal competitive overlap that is alleged in the complaint.[3]

One problem with the alleged all-programming market is that basic services (such as Turner's CNN) and premium services (such as Time Warner's HBO) are not substitutes along the usual dimensions of competition. Most significantly, they do not compete on price. CNN is sold to MVPDs for a fee per subscriber that is on average less than one-tenth of the average price for HBO, and it is resold as part of a package of basic services for an inclusive fee. HBO is sold at wholesale for more than ten times as much; it is resold to consumers on an a la carte basis or in a package with other premium services, and a subscription to basic service usually is a prerequisite. It is highly unlikely that a cable operator, to avoid a price increase, would drop a basic channel and replace it with a significantly more expensive premium channel. Furthermore, cable system operators tell us that when the price for basic cable services increases, consumers drop pay services, suggesting that at least at the retail level these goods are complementary, rather than substitutes for one another.

Another possible argument is that CNN and HBO should be in the same product market because, from the cable operator's perspective, each is ''necessary to attract and retain a significant percentage of their subscribers.'' [4] If CNN and HBO were substitutes in this sense, we would expect to see cable system operators playing them against one another to win price concessions in negotiations with programming sellers, but there is no evidence that they have been used this way, and cable system operators have told us that basic and premium channels do not compete on price.[5] There are closer substitutes, in terms of price and content, for CNN (in the basic tier) and for HBO (in the premium tier).

I am not persuaded that the product market alleged in the complaint could be sustained. The products of Time Warner and Turner are not the first and second choices for consumers (or cable system operators or other MVPDs), and there are no other horizontal overlaps warranting enforcement action in any other cable programming market.[6] Under these circumstances, it would seem appropriate to withdraw the proposed complaint.

Entry

The proposed complaint alleges that entry is difficult and unlikely.[7] This is an astonishing allegation, given the amount of entry in the cable programming market. The number of cable programming services increased from 106 to 129 in 1995, according to the FCC.[8] One source reported thirty national 24-hour channels expected to launch this year,[9] and another recently identified seventy-three networks ''on the launch pad'' for 1996.[10] That adds up to between fifty-three and ninety-six new and announced networks in two years. Another source listed 141 national 24-hour cable networks launched or announced between January 1993 and March 1996.[11]

This does not mean that entry is easy or inexpensive. Not all the channels that have announced will launch a service, and not all those that launch will succeed.[12] But some of them will. Some

[1] Liberty Media Corporation, a wholly-owned subsidiary of TCI, also is named in the complaint and order. For simplicity, references in this statement to TCI include Liberty.

[2] 1992 Horizontal Merger Guidelines ¶ 2.2. The theory is that when the post-merger firm raises the price on product A or on products A and B, sales lost due to the price increase on the first-choice product (A) will be diverted to the second-choice product (B). The price increase is unlikely to be profitable unless a significant share of consumers regard the products of the merged firm as their first and second choices.

[3] Complaint ¶ 24.

[4] Complaint ¶¶ II.4 & III.9. To the extent that each network (CNN and HBO) is viewed as ''necessary'' to attract subscribers, as alleged in the complaint, each would appear to have market power quite independent of the proposed transaction and of each other.

[5] If the market includes premium cable channels, it probably ought also to include video cassette rentals, which constrain the pricing of premium channels. Federal Communications Commission, Second Annual Report on the Status of Competition in the Market for the Delivery of Video Programming ¶ 121 (Dec. 7, 1995) (hereafter ''FCC Report''). If the theory is that HBO and CNN compete for channel space, the market probably should include over-the-air broadcast networks, at least to the extent that they can obtain cable channel space as the price for retransmission rights.

[6] In the two product markets most likely to be sustained under the law, basic cable services and premium cable services, the transaction falls within safe harbors described in the 1992 Merger Guidelines.

[7] Complaint ¶¶ 33–35.

[8] FCC Report ¶ 10.

[9] National Cable Television Association, Cable Television Developments 103–17 (Fall 1995).

[10] ''On the Launch Pad,'' Cable World, April 29, 1996, at 143; see also Cablevision, Jan. 22, 1996, at 54 (98 announced services with expected launches in 1996).

[11] ''A Who's Who of New Nets,'' Cablevision, April 15, 1996 (Special Supp.) at 27A–44A (as of March 28, 1996, 163 new networks when regional, pay-per-view and interactive services are included).

[12] ''The stamina and pocket-depth of backers of new players [networks] still remain key factors for survival. However, distribution is still the name of

recent entrants include CNNfn (December 1995), Nick at Nite (April 1996), MS/NBC (July 1996) and the History Channel (January 1995).[13] The Fox network plans to launch a third 24-hour news channel, and Westinghouse and CBS Entertainment recently announced that they will launch a new entertainment and information cable channel, Eye on People, in March 1997.[14] The fact of so much ongoing entry indicates that entry should be regarded as virtually immediate.

New networks need not be successful or even launched before they can exert significant competitive pressure. Announced launches can affect pricing immediately. The launch of MS/NBC and the announcement of Fox's cable news channel already may have affected the incumbent all-news channel, CNN, because cable system operators can credibly threaten to switch to one of the new news networks in negotiations to renew CNN.[15]

Any constraint on cable channel capacity does not appear to be deterring entry of new networks. Indeed, the amount of entry that is occurring apparently reflects confidence that channel capacity will expand, for example, by digital technology. In addition, alternative MVPDs, such as Direct Broadcast Satellite (DBS), may provide a launching pad for new networks.[16] For example, CNNfn was launched in 1995 with 4 to 5 million households, divided between DBS and cable.

Nor should we ignore significant technological changes in video distribution that are affecting cable programming. One such change is the development and commercialization of new distribution methods that can provide alternatives for both cable programmers and subscribers. DBS is one example. With digital capability, DBS can provide hundreds of channels to subscribers. By September 1995, DBS was available in all forty-eight contiguous states and Alaska.[17] In April 1996, DBS had 2.4 million customers; in August 1996, DBS had 3.34 million subscribers[18] (compared to 62 million cable customers in the U.S.). AT&T recently invested $137.5 million in DirecTV, a DBS provider, began to sell satellite dishes and programming to its long distance customers in four markets, and reportedly plans to expand to the rest of the country in September 1996.[19] EchoStar and AlphaStar both have launched new DBS services, and MCI Communication and News Corp. have announced a partnership to enter DBS.[20] Some industry analysts predict that DBS will serve 15 million subscribers by 2000.[21]

Digital technology, which would expand cable capacity to as many as 500 channels, is another important development. DBS already uses digital technology, and some cable operators plan to begin providing digital service later this year. Discovery Communications (The Discovery Channel) has announced that it will launch four new programming services designed for digital boxes in time for TCI's ''digital box rollout'' this fall.[22] (Even without digital service, cable systems have continued to upgrade their capacity; in 1994, about 64% of cable systems offered thirty to fifty-three channels, and more than 14% offered fifty-four or more channels.[23]) Local telephone companies have entered as distributors via video dialtone, MMDS[24] and cable systems, and the telcos are exploring additional ways to enter video distribution markets. Digital compression and advanced television technologies could make it possible for multiple programs to be broadcast over a single over-the-air broadcast channel.[25] When these developments will be fully realized is open to debate, but it is clear that they are on the way and affecting competition. According to one trade association official, cable operators are responding to competition by ''upgrading their infrastructures with fiber optics and digital compression technologies to boost channel capacity. * * * What's more, cable operators are busily trying to polish their images with a public that has long registered gripes over pricing, customer service and programming choice.''[26]

Ongoing entry in programming suggests that no program seller could maintain an anticompetitive price increase and, therefore, there is no basis for liability under Section 7 of the Clayton Act. Changes in the video distribution market will put additional pressure on both cable systems and programming providers to be competitive by providing quality programming at reasonable prices. The quality and quantity of entry in the industry warrants dismissal of the complaint.

Horizontal Theory of Liability

The proposed complaint alleges that Time Warner will be able to exploit its ownership of HBO and the Turner basic channels by ''bundling'' Turner networks with HBO, that is, by selling them as a package.[27] As a basis for liability in a merger case, this appears to be without precedent.[28] Bundling is not always anticompetitive, and one problem with the theory is that we cannot predict when it will be anticompetitive.[29] Bundling can be used to transfer market power from the ''tying'' product to the ''tied'' product, but it also is used in many industries as a means of discounting. Popular cable networks, for example, have been sold in a package at a discount from the single product price. This can be a way for a programmer to encourage cable system operators to carry multiple

the game.'' Cablevision, April 15, 1996 (Special Supp.), at 3A.

[13] Carter, ''For History on Cable, the Time Has Arrived,'' N.Y. Times, May 20, 1996, at D1. The article reported that the History Channel began in January 1995 with one million subscribers, reached 8 million subscribers by the end of the year and by May 1996 was seen in 18 million homes.

[14] Carmody, ''The TV channel,'' The Washington Post, Aug. 21, 1996, at D12.

[15] This is the kind of competition we would expect to see between cable networks that are substitutes for one another and the kind of competition that is non-existent between CNN and HBO.

[16] The entry of alternative MVPD technologies may put competitive pressure on cable system operators to expand capacity more quickly. See ''The Birth of Networks,'' Cablevision (Special Supp. April 15, 1996), at 8A (cable system operators ''don't want DBS and the telcos to pick up the services of tomorrow while they are being overly arrogant about their capacity'').

[17] FCC Report ¶ 49.

[18] DBS Digest, Aug. 22, 1996 (http://www.dbsdish.com/dbsdata,html (Sept. 5, 1996)).

[19] See Breznick, ''Crowded Skies,'' Cable World (April 29, 1996) (http://www.mediacentral.com/magazines/Cable Worls/News96/1996042913.htm/539128 (Setp. 3, 1996); see also N.Y. Times, JUly 14, 1996, at 23 (AT&T full page ad for digital satellite system DirecTV and USSB); USA Today, Aug. 20, 1996, at 5D (DISH Network full page ad for digital satellite system and channels).

[20] Breznick, ''Crowded Skies,'' Cable World, April 29, 1996 (http://www.mediacentral.com/magazines/Cable World/news96/1996042913.htm/539128 (Sept. 3, 1996)).

[21] See *id*.

[22] Katz, ''Discovery Goes Digital,'' Multichannel News Digest, Sept. 3, 1996 (''The new networks * * * will launch Oct. 22 in order to be included in Tele-Communications Inc.'s digital box rollout in Hartford, Conn.'') (http://www.multichannel.com/digest.htm (Sept. 5, 1996)).

[23] FCC Report at B–2 (Table 3).

[24] MMDS stands for multichannel multipoint distribution service, a type of wireless cable See FCC Report at ¶¶ 68.85. Industry observers project that MMDS will serve more than 2 million subscribers in 1997 and grow more than 280% between 1995 and 1998. FCC Report ¶ 71.

[25] FCC Report ¶ 116.

[26] Pendleton, ''Keeping Up With Cable Competition,'' Cable World, April 29, 1996, at 158.

[27] Complaint ¶ 38a.

[28] *Cf.* Heublein, Inc., 96 F.T.C. 385, 596–99 (1980) (rejecting a claim of violation based on leveraging).

[29] See Whinston, ''Tying, Foreclosure, and Exclusion,'' 80 Am. Econ. Rev. 837, 855–56 (1990) (tying can be exclusionary, but ''even in the simple models considered [in the article], which ignore a number of other possible motivations for the practice, the impact of this exclusion on welfare is uncertain. This fact, combined with the difficulty of sorting out the leverage-based instances of tying from other cases, makes the specification of a practical legal standard extremely difficult.'').

networks and achieve cross-promotion among the networks in the package. Even if it seemed more likely than not that Time Warner would bundle HBO with Turner networks after the merger, we could not *a priori* identify this as an anticompetitive effect.

The alleged violation rests on a theory that the acquisition raises the potential for unlawful tying. To the best of my knowledge, Section 7 of the Clayton Act has never been extended to such a situation. There are two reasons not to adopt the theory here. First, challenging the mere potential to engage in such conduct appears to fall short of the ''reasonable probability'' standard under Section 7 of the Clayton Act. We do not seek to enjoin mergers on the mere possibility that firms in the industry may later choose to engage in unlawful conduct. It is difficult to imagine a merger that could not be enjoined if ''mere possibility'' of unlawful conduct were the standard. Here, the likelihood of anticompetitive effects is even more removed, because tying, the conduct that might possibly occur, in turn might or might not prove to be unlawful. Second, anticompetitive tying is unlawful, and Time Warner would face private law suits and agency enforcement action for such conduct.

The proposed remedy for the alleged bundling is to prohibit it,[30] with no attempt to distinguish efficient bundling from anticompetitive bundling.[31] Assuming liability on the basis of an anticompetitive horizontal overlap, the obvious remedy would be to enjoin the transaction or require the divestiture of HBO. Divestiture is a simple, easily reviewable and complete remedy for an anticompetitive horizontal overlap. The weakness of the Commission's case seems to be the only impediment to imposing that remedy here.

Vertical Theories

The complaint also alleges two vertical theories of competitive harm. The first is foreclosure of unaffiliated programming from Time Warner and TCI cable systems.[32] The second is anticompetitive price discrimination against competing MVPDs in the sale of cable programming.[33] Neither of these alleged outcomes appears particularly likely.

Foreclosure

Time Warner cannot foreclose the programming market by refusing carriage on its cable system, because Time Warner has less than 20% of cable subscribers in the United States. Even if TCI were willing to join in an attempt to barricade programming produced by others from distribution, TCI and Time Warner together control less than 50% of the cable subscribers in the country. In that case, entry of programming via cable might be more expensive (because of the costs of obtaining carriage on a number of smaller systems), but it need not be foreclosed. And even if Time Warner and TCI together controlled a greater share of cable systems, the availability of alternative distributors of video programming and the technological advances that are expanding cable channel capacity make foreclosure as a result of this transaction improbable.

The foreclosure theory also is inconsistent with the incentives of the market. Cable system operators want more and better programming, to woo and win subscribers. To support their cable systems, Time Warner and TCI must satisfy their subscribers by providing programming that subscribers want at reasonable prices. Given competing distributors and expanding channel capacity, neither of them likely would find it profitable to attempt to exclude new programming.

TCI as a shareholder of Time Warner, as the transaction has been proposed to us (with a minority share of less than 10%), would have no greater incentive than it had as a 23% shareholder of Turner to protect Turner programming from competitive entry. Indeed, TCI's incentive to protect Turner programming would appear to be diminished.[34] If TCI's interest in Time Warner increased, it stands to reason that TCI's interest in the well-being of the Turner networks also would increase. But it is important to remember that TCI's principal source of income is its cable operations, and its share of Time Warner profits from Turner programming would be insufficient incentive for TCI to jeopardize its cable business.[35] It may be that TCI could acquire an interest in Time Warner that could have anticompetitive consequences, but the Commission should analyze that transaction when and if TCI increases its holdings. The divestiture requirement imposed by the order[36] is not warranted at this time.

Another aspect of the foreclosure theory alleged in the complaint is a carriage agreement (programming service agreement or PSA) between TCI and Turner. Under the PSA, TCI would carry certain Turner networks for twenty years, at a discount from the average price at which Time Warner sells the Turner networks to other cable operators. The complaint alleges that TCI's obligations under the PSA would diminish its incentives and ability to carry programming that competes with Turner programming,[37] which in turn would raise barriers to entry for unaffiliated programming. The increased difficulty of entry, so the theory goes, would in turn enable Time Warner to raise the price of Turner programming sold to cable operators and other MVPDs. It is hard to see that the PSA would have anticompetitive effects. TCI already has contracts with Turner that provide for mandatory carriage of CNN and TNT, and TCI is likely to continue to carry these programming networks for the foreseeable future.[38] The current agreements do not raise antitrust issues, and the PSA raises no new ones. Any theoretical bottleneck on existing systems would be even further removed by the time the carriage requirements under the PSA would have become effective (when existing carriage commitments expire), because technological changes will have expanded cable channel capacity and alternative MVPDs will have expanded their subscribership. The PSA could even give TCI incentives to encourage the entry of new programming to compete with Time Warner's programming and keep TCI's costs down.[39] The PSA would have afforded Time Warner long term carriage for the Turner networks, given TCI long term programming commitments with some price protection, and eliminated the costs of renegotiating a number of existing Turner/TCI carriage agreements as they expire. These are efficiencies. No compelling reason has been

[30] Order ¶ V.

[31] Although the proposed order would permit any bundling that Time Warner or Turner could have implemented independently before the merger, the reason for this distinction appears unrelated to distinguishing between pro- and anti-competitive bundling.

[32] Complaint ¶ 38b.

[33] Complaint ¶ 38c.

[34] Turner programming would account for only part of TCI's interest in Time Warner.

[35] Even if its share of Time Warner were increased to 18%, TCI's interest in the combined Time Warner/Turner cash flow would be only slightly greater than TCI's pre-transaction interest in Turner cash flow, and it would still amount to only an insignificant fraction of the cash flow generated by TCI's cable operations.

[36] Order ¶¶ II & III.

[37] Complaint ¶ 38b(2).

[38] Cable system operators like to keep their subscribers happy, and subscribers do not like to have popular programming cancelled.

[39] Under the ''industry average price'' provision of the PSA, Time Warner could raise price to TCI by increasing the price it charges other MVPDs. TCI could encourage entry to defeat any attempt by Time Warner to increase price.

advanced for requiring that the carriage agreement be cancelled.[40]

In addition to divestiture by TCI of its Time Warner shares and cancellation of the TCI/Turner carriage agreement, the proposed remedies for the alleged foreclosure include: (1) Antidiscrimination provisions by which Time Warner must abide in dealing with program providers; [41] (2) recordkeeping requirements to police compliance with the antidiscrimination provision; [42] and (3) a requirement that Time Warner carry ''at least one Independent Advertising-Supported News and Information National Video Programming Service.'' [43] These remedial provisions are unnecessary, and they may be harmful.

Paragraph VII of the proposed order, the antidiscrimination provision, seeks to protect unaffiliated programming vendors from exploitation and discrimination by Time Warner. The order provision is taken almost verbatim from a regulation of the Federal Communications Commission.[44] It is highly unusual, to say the least, for an order of the FTC to require compliance with a law enforced by another federal agency, and it is unclear what expertise we might bring to the process of assuring such compliance. Although a requirement to obey existing law and FCC regulations may not appear to burden Time Warner unduly, the additional burden of complying with the FTC order may be costly for both Time Warner and the FTC. In addition to imposing extensive recordkeeping requirements,[45] the order apparently would create another forum for unhappy programmers, who could seek to instigate an FTC investigation of Time Warner's compliance with the order, instead of or in addition to citing the same conduct in a complaint filed with and adjudicated by the FCC.[46] The burden of attempting to enforce compliance with FCC regulations is one that this agency need not and should not assume.

Paragraph IX of the proposed order requires Time Warner to carry an independent all-news channel (presumably MS/NBC or the anticipated Fox all-news channel). This requirement is entirely unwarranted. A duty to deal might be appropriate on a sufficient showing if Time Warner were a monopolist. But with less than 20% of cable subscribers in the United States, Time Warner is neither a monopolist nor an ''essential facility'' in cable distribution.[47] CNN, the apparent target of the FTC-sponsored entry, also is not a monopolist but is one of many cable programming services in the all-programming market alleged in the complaint. Clearly, CNN also is one of many sources of news and information readily available to the public, although this is not a market alleged in the complaint. Antitrust law, properly applied, provides no justification whatsoever for the government to help establish a competitor for CNN. Nor is there any apparent reason, other than the circular reason that it would be helpful to them, why Microsoft, NBC, or Rupert Murdoch's Fox needs a helping hand from the FTC in their new programming endeavors. CNN and other program networks did not obtain carriage mandated by the FTC when they launched; why should the Commission now tilt the playing field in favor of other entrants?

Price Discrimination

The complaint alleges that Time Warner could discriminatory raise the prices of programming services to its MVPD rivals,[48] presumably to protect its cable operations from competition. This theory assumes that Time Warner has market power in the all-cable programming market. As discussed above, however, there are reasons to think that the alleged all-cable programming market would not be sustained, and entry into cable programming is widespread and, because of the volume of entry, immediate. Under those circumstances, it appears not only not likely but virtually inconceivable that Time Warner could sustain any attempt to exercise market power in the all-cable programming market.

Whatever the merits of the theory in this case, however, discrimination against competing MVPDs in price or other terms of sale of programming is prohibited by federal statute [49] and by FCC regulations,[50] and the FCC provides a forum to adjudicate complaints of this nature. Unfortunately, the majority is not content to leave policing of telecommunications to the FCC.

Paragraph VI of the proposed order addresses the alleged violation in the following way: (1) It requires Time Warner to provide Turner programming to competing MVPDs on request; and (2) it establishes a formula for determining the prices that Time Warner can charge MVPDs for Turner programming in areas in which Time Warner cable systems and the MVPDs compete. The provision is inconsistent with two antitrust principles: Antitrust traditionally does not impose a duty to deal absent monopoly, which does not exist here, and antitrust traditionally has not viewed price regulation as an appropriate remedy for market power. Indeed, price regulation usually is seen as antithetical to antitrust.

Although Paragraph VI ostensibly has the same nondiscrimination goal as federal telecommunications law and FCC regulations, the bright line standard in the proposed order for determining a nondiscriminatory price fails to take account of the circumstances Congress has identified in which price differences could be justified, such as, for example, cost differences, economies of scale or ''other direct and legitimate economic benefits reasonably attributable to the number of subscribers serviced by the distributor.'' [51] These are significant omissions, particularly for an agency that has taken pride in its mission to prevent unfair methods of competition. There is no apparent reason or authority for creating this exception to a congressional mandate. To the extent that the proposed order creates a regulatory scheme different from that afforded by the FCC, disgruntled MVPDs may find it to their advantage to seek sanctions against Time Warner at the FTC.[52] This is likely to be costly for the FTC and for Time Warner, and the differential scheme of regulation also could impose other, unforeseen costs on the industry.

Efficiencies

As far as I can tell, the proposed consent order entirely ignores the likely efficiencies of the proposed transaction. The potential vertical efficiencies include more and better programming options for consumers and reduced transaction costs for the merging firms.

[40] See Order ¶ IV. There would appear to be even less justification for cancelling the PSA after ECI has been required either to divest or to cap its shareholdings in Time Warner.

[41] Order ¶ VII.

[42] Order ¶ VIII.

[43] Order ¶ IX.

[44] See 47 CFR 76.1301(a)–(c).

[45] The recordkeeping requirement may simply replicate an FCC requirement and perhaps impose no additional costs on Time Warner.

[46] See 47 CFR 76.1302. The FCC may mandate carriage and impose prices, terms and other conditions of carriage.

[47] Even in New York City, undoubtedly an important media market, available data indicate that Time Warner apparently serves only about one-quarter of cable households. See Cablevision, May 13, 1996, at 57; April 29, 1996, at 131 (Time Warner has about 1.1 million subscribers in New York, which has about 4.5 million cable households). We do not have data about alternative MVPD subscribers in the New York area.

[48] Complaint ¶ 38c.

[49] 47 U.S.C.A. 548.

[50] CFR 76.1000–76.1002.

[51] U.S.C.A. 548(c)(B)(i)–(iii)

[52] Most people outside the FTC and the FCC already confuse the two agencies. Surely we do not want to contribute to this confusion.

The potential horizontal efficiencies include savings from the integration of overlapping operations and of film and animation libraries. For many years, the Commission has devoted considerable time and effort to identifying and evaluating efficiencies that may result from proposed mergers and acquisitions. Although cognizable efficiencies occur less frequently than one might expect, the Commission has not stinted in its efforts to give every possible consideration to efficiencies. That makes the apparent disinterest in the potential efficiencies of this transaction decidedly odd.

Industry Complaints

We have heard many expressions of concern about the proposed transaction. Cable system operators and alternative MVPDs have been concerned about the price and availability of programming from Time Warner after the acquisition. Program providers have been concerned about access to Time Warner's cable system. These are understandable concerns, and I am sympathetic to them. To the extent that these industry members want assured supply or access and protected prices, however, this is the wrong agency to help them. Because Time Warner cannot foreclose either level of service and is neither a monopolist nor an ''essential facility'' in the programming market or in cable services, there would appear to be no basis in antitrust for the access requirements imposed in the order.

The Federal Communications Commission is the agency charged by Congress with regulating the telecommunications industry, and the FCC already has rules in place prohibiting discriminatory prices and practices. While there may be little harm in requiring Time Warner to comply with communications law, there also is little justification for this agency to undertake the task. To the extent that the proposed consent order offers a standard different from that promulgated by Congress and the FCC, it arguably is inconsistent with the will of Congress. To the extent that the proposed consent order would offer a more attractive remedy for complaints from disfavored competitors and customers of Time Warner, they are more likely to turn to us than to the FCC. There is much to be said for having the FTC confine itself to FTC matters, leaving FCC matters to the FCC.

The proposed order should be rejected.

Dissenting Statement of Commissioner Roscoe B. Starek, III, in the Matter of Time Warner Inc., et al. File No. 961–0004

I respectfully dissent from the Commission's decision to accept a consent agreement with Time Warner Inc. (''TW''), Turner Broadcasting System, Inc. (''TBS''), Tele-Communications, Inc. (''TCI''), and Liberty Media Corporation. The proposed complaint against these producers and distributors of cable television programming alleges anticompetitive effects arising from (1) The horizontal integration of the programming interests of TW and TBS and (2) the vertical integration of the TBS's programming interests with TW's and TCI's distribution interests. I am not persuaded that either the horizontal or the vertical aspects of this transaction are likely ''substantially to lessen competition'' in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, or otherwise to constitute ''unfair methods of competition'' in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Moreover, even if one were to assume the validity of one or more theories of violation underlying this action, the proposed order does not appear to prevent the alleged effects and may instead create inefficiency.

Horizontal Theories of Competitive Harm

This transaction involves, inter alia, the combination of TW and TBS, two major suppliers of programming to multichannel video program distributors (''MVPDs''). Accordingly, there is a straightforward theory of competitive harm that merits serious consideration by the Commission. In its most general terms, the theory is that cable operators regard TW programs as close substitutes for TBS programs. Therefore, the theory says, TW and TBS act as premerger constraints on each other's ability to raise program prices. Under this hypothesis, the merger eliminates this constraint, allowing TW—either unilaterally or in coordination with other program vendors—to raise prices on some or all of its programs.

Of course, this story is essentially an illustration of the standard theory of competitive harm set forth in Section 2 of the 1992 Horizontal Merger Guidelines.[1] Were an investigation pursuant to this theory to yield convincing evidence that it applies to the current transaction, under most circumstances the Commission would seek injunctive relief to prevent the consolidation of the assets in question. The Commission has eschewed that course of action, however, choosing instead a very different sort of ''remedy'' that allows the parties to proceed with the transaction but restricts them from engaging in some (but not all) ''bundled'' sales of programming to unaffiliated cable operators.[2] Clearly, this choice of relief implies an unusual theory of competitive harm from what ostensibly is a straightforward horizontal transaction. The Commission's remedy does nothing to prevent the most obvious manifestation of postmerger market power—an across-the-board price increase for TW and TBS programs. Why has the Commission forgone its customary relief directed against its conventional theory of harm?

The plain answer is that there is little persuasive evidence that TW's programs constrain those of TBS (or vice-versa) in the fashion described above. In a typical FTC horizontal merger enforcement action, the Commission relies heavily on documentary evidence establishing the substitutability of the parties' products or services.[3] For example, it is

[1] U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, § 2 (1992), 4 Trade Reg. Rep. (CCH) ¶ 13,104 at 20,573–6 *et seq.*

[2] In the Analysis of Proposed consent Order to Aid Public Comment (§ IV.C), the Commission asserts that ''the easiest way the combined firm could exert substantially greater negotiating leverage over cable operators is by combining all or some of such 'marquee' services and offering them as a package or offering them along with unwanted programming.'' As I note below, it is far from obvious why this bundling strategy represents the ''easiest'' way to exercise market power against cable operators. The easiest way to exercise any newly-created market power would be simply to announce higher programming prices.

[3] The Merger Guidelines emphasize the importance of such evidence. Section 1.11 specifically identifies the following two types of evidence as particularly informative: ''(1) Evidence that buyers have shifted or have considered shifting purchases between products in response to relative changes in price or other competitive variables [and] (2) evidence that sellers base business decisions on the prospect of buyer substitution between products in response to relative changes in price or other competitive variables.''

To illustrate, in Coca-Cola Bottling Co. of the Southwest, Docket No. 9215, complaint counsel argued in favor of a narrow product market consisting of ''all branded carbonated soft drinks'' (''CSDs''), while respondent argued for a much broader market. In determining that all branded CSDs constituted the relevant market, the Commission place great weight on internal documents from local bottlers of branded CSDs showing that those bottlers ''[took] into account only the prices of other branded CSD products [and not the prices of private label or warehouse-delivered soft drinks] in deciding on pricing for their own branded CSD products.'' 5 Trade Reg. Rep. (CCH) ¶23,681 at 23,413 (Aug. 31, 1994), vacated and remanded on other grounds, *Coca-Cola Bottling Co. of the Southwest* v. *FTC*, No. 94–41224 (5th Cir., June 10, 1996). (The Commission dismissed its complaint on September 6, 1996.)

standard to study the parties' internal documents to determine which producers they regard as their closest competitors. This assessment also depends frequently on internal documents supplied by customers that show them playing off one supplier against another—via credible threats of supplier termination—in an effort to obtain lower prices.

In this matter, however, documents of this sort are conspicuous by their absence. Notwithstanding a voluminous submission of materials from the respondents and third parties (and the considerable incentives of the latter—especially other cable operators—to supply the Commission with such documents), there are no documents that reveal cable operators threatening to drop a TBS ''marquee'' network (e.g., CNN) in favor of a TW ''marquee'' network (e.g., HBO). There also are no documents from, for instance, TW suggesting that it sets the prices of its ''marquee'' networks in reference to those of TBS, taking into account the latter's likely competitive response to unilateral price increases or decreases. Rather, the evidence supporting any prediction of a postmerger price increase consists entirely of customers' contentions that program prices would rise following the acquisition. Although customers' opinions on the potential effects of a transaction often are important, they seldom are dispositive. Typically the Commission requires substantial corroboration of these opinions from independent information sources.[4]

Independent validation of the anticompetitive hypothesis becomes particularly important when key elements of the story lack credibility. For a standard horizontal theory of harm to apply here, one key element is that, prior to the acquisition, a MVPD could credibly threaten to drop a marquee network (e.g., CNN), provided it had access to another programmer's marquee network (e.g., HBO) that it could offer to potential subscribers. This threat would place the MVPD in a position to negotiate a better price for the marquee networks than if those networks were jointly owned.

Here, the empirical evidence gathered during the investigation reveals that such threats would completely lack credibility. Indeed, there appears to be little, if any, evidence that such threats ever have been made, let alone carried out. CNN and HBO are not substitutes, and both are carried on virtually all cable systems nationwide. If, as a conventional horizontal theory of harm requires, these program services are truly substitutes—if MVPDs regularly play one off against the other, credibly threatening to drop one in favor of another—then why are there virtually no instances in which an MVPD has carried out this threat by dropping one of the marquee services? The absence of this behavior by MVPDs undermines the empirical basis for the asserted degree of substitutability between the two program services.[5]

Faced with this pronounced lack of evidence to support a conventional market power story and a conventional remedy, the Commission has sought refuge in what appears to be a very different theory of postmerger competitive behavior. This theory posits an increased likelihood of program ''bundling'' as a consequence of the transaction.[6] But there are two major problems with this theory as a basis for an enforcement action. First, there is no strong theoretical or empirical basis for believing that an increase in bundling of TW and TBS programming would occur postmerger. Second, even if such bundling did occur, there is no particular reason to think that it would be competitively harmful.

Given the lack of documentary evidence to show that TW intends to bundle its programming with that of TBS, I do not understand why the majority considers an increase in program bundling to be a likely feature of the postmerger equilibrium, nor does economic theory supply a compelling basis for this prediction. Indeed, the rationale for this element of the case (as set forth in the Analysis to Aid Public Comment) can be described charitably as ''incomplete.'' According to the Analysis, unless the FTC prevents it, TW would undertake a bundling strategy in part to foist ''unwanted programming'' upon cable operators.[7] Missing from the Analysis, however, is any sensible explanation of why TW should wish to pursue this strategy, because the incentives to do so are not obvious.[8]

A possible anticompetitive rationale for ''bundling'' might run as follows: by requiring cable operators to purchase a bundle of TW and TBS programs that contains substantial amounts of ''unwanted'' programming, TW can tie

[4] For example, in *R.R. Donnelley Sons & Co., et al.*, Docket No. 9243, the Administrative Law Judge's decision favoring complaint counsel rested in part on his finding that ''[a]s soon as the Meredith/Burda acquisition was announced, customers expressed concern to the FTC and the parties about the decrease in competition that might result.'' (Initial Decision Finding 404.) In overturning the ALJ's decision, the Commission cautioned: ''There is some danger in relying on these customer complaints to draw any general conclusions about the likely effects of the acquisition or about the analytical premises for those conclusions. The complaints are consistent with a variety of effects, and many—including those the ALJ relied upon—directly contradict [c]omplaint [c]ounsel's prediction of unilateral price elevation.'' 5 Trade Reg. Rep. (CCH) ¶23,876 at 23,660 n. 189 (July 21, 1995).

Also, in several instances involving hospital mergers in concentrated markets, legions of third parties came forth to attest to the transaction's efficiency. The Commission has discounted this testimony, however, when these third parties could not articulate or document the source of the claimed efficiency, or when the testimony lacked corroboration from independent information sources. I believe that the Commission should apply the same evidentiary standards to the third-party testimony in the current matter.

[5] In virtually any case involving less pressure to come up with something to show for the agency's strenuous investigative efforts, the absence of such evidence would lead the Commission to reject a hypothesized product market that included both marquee services. Suppose that two producers of product A proposed to merge and sought to persuade the Commission that the relevant market also included product B, but they could not provide any examples of actual substitution of B for A, or any evidence that threats of substitution of B for A actually elicited price reductions from sellers of A. In the usual run of cases, this lack of substitutability would almost surely lead the Commission to reject the expanded market definition. But not so here.

[6] As I noted earlier, a remedy that does nothing more than prevent ''bundling'' of different programs would fail completely to prevent the manifestations of market power—such as across-the-board price increases—most consistent with conventional horizontal theories of competitive harm.

[7] As I have noted, *supra* n. 2, the Analysis also claims that TW could obtain ''substantially greater negotiating leverage over cable operator * * * by combining all or some of [the merged firm's] 'marquee' services and offering them as a package * * *'' If the Analysis uses the term ''negotiating leverage'' to mean ''market power'' as the latter is conventionally defined, then it confronts three difficulties: (1) The record fails to support the proposition that the TW and TBS ''marquee'' channels are close substitutes for each other; (2) even assuming that those channels are close substitutes, there are more straightforward ways for TW to exercise postmerger market power; and (3) the remedy does nothing to prevent these more straightforward exercises of market power. *See* discussion *supra*.

[8] In ''A Note on Block Booking'' in The Organization of Industry (1968), George Stigler analyzed the practice of ''block booking''—or, in current parlance, ''bundling''—''marquee'' motion pictures with considerably less popular films. Some years earlier, the United States Supreme Court had struck this practice down as an anticompetitive ''leveraging'' of market power from desirable to undesirable films. *United States* v. *Loew's Inc.*, 371 U.S. 38 (1962). As Stigler explained (at 165), it is not obvious why distributors should wish to force exhibitors to take the inferior film:

> Consider the following simple example. One film, Justice Goldberg cited Gone with the Wind, is worth $10,000 to the buyer, while a second film, the Justice cited Getting Gertie's Garter, is worthless to him. The seller could sell the one for $10,000, and throw away the second, for no matter what its cost, bygones are forever bygones. Instead the seller compels the buyer to take both. But surely he can obtain no more than $10,000, since by hypothesis this is the value of both films to the buyer. Why not, in short, use his monopoly power directly on the desirable film? It seems no more sensible, on this logic, to block book the two films than it would be to compel the exhibitor to buy Gone with the Wind and seven Ouija boards, again for $10,000.

up scarce channel capacity and make entry by new programmers more difficult. But even if that strategy were assumed arguendo to be profitable,[9] the order would have only a trivial impact on TW's ability to pursue it. The order prohibits only the bundling of TW programming with TBS programming; TW remains free under the order to create new ''bundles'' comprising exclusively TW, or exclusively TBS, programs. Given that many TW and TBS programs are now sold on an unbundled basis—a fact that calls into question the likelihood of increased postmerger bundling[10]—and given that, under the majority's bundling theory, any TW or TBS programming can tie up a cable channel and thereby displace a potential entrant's programming, the order hardly would constrain TW's opportunities to carry out this ''foreclosure'' strategy.

Finally, all of the above analysis implicitly assumes that the bundling of TW and TBS programming, if undertaken, would more likely than not be anticompetitive. The Analysis to Aid Public Comment, however, emphasizes that bundling programming in many other instances can be procompetitive. There seems to be no explanation of why the particular bundles at issue here would be anticompetitive, and no articulation of the principles that might be used to differentiate welfare-enhancing from welfare-reducing bundling.[11]

Thus, I am neither convinced that increased program bundling is a likely consequence of this transaction nor persuaded that any such bundling would be anticompetitive. Were I convinced that anticompetitive bundling is a likely consequence of this transaction, I would find the proposed remedy inadequate.

Vertical Theories of Competitive Harm

The proposed consent order also contains a number of provisions designed to alleviate competitive harm purportedly arising from the increased degree of vertical integration between program suppliers and program distributors brought about by this transaction.[12] I have previously expressed my skepticism about enforcement actions predicated on theories of harm from vertical relationships.[13] The current complaint and proposed order only serve to reinforce my doubts about such enforcement actions and about remedies ostensibly designed to address the alleged competitive harms.

The vertical theories of competitive harm posited in this matter, and the associated remedies, are strikingly similar to those to which I objected in Silicon Graphics, Inc. (''SGI''), and the same essential criticisms apply. In SGI, the Commission's complaint alleged anticompetitive effects arising from the vertical integration of SGI—the leading manufacturer of entertainment graphics workstations—with Alias Research, Inc., and Wavefront Technologies, Inc.—two leading suppliers of entertainment graphics software. Although the acquisition seemingly raised straightforward horizontal competitive problems arising from the combination of Alias and Wavefront, the Commission inexplicably found that the horizontal consolidation was not anticompetitive on net.[14] Instead, the order addressed only the alleged vertical problems arising from the transaction. The Commission alleged, *inter alia*, that the acquisitions in SGI would reduce competition through two types of foreclosure: (1) Nonintegrated software vendors would be excluded from the SGI platform, thereby inducing their exit (or deterring their entry); and (2) rival hardware manufacturers would be denied access to Alias and Wavefront software, without which they could not effectively compete against SGI. Similarly, in this case the Commission alleges (1) that nonintegrated program vendors will be excluded from TW and TCI cable systems and (2) that potential MVPD entrants into TW's cable markets will be denied access to (or face supracompetitive prices for) TW and TBS programming—thus lessening their ability to effectively compete against TW's cable operations. The complaint further charges that the exclusion of nonintegrated program vendors from TW's and TCI's cable systems will deprive those vendors of scale economies, render them ineffective competitors *vis-à-vis* the TW/Turner programming services, and thus confer market power on TW as a seller of programs to MVPDs in non-TW/non-TCI markets.

My dissenting statement in SGI identified the problems with this kind of analysis. For one thing, these two types of foreclosure—foreclosure of independent program vendors from the TW and TCI cable systems, and foreclosure of independent MVPD firms from TW and TBS programming—tend

[9] The argument here basically is a variant of the argument often used to condemn exclusive dealing as a tool for monopolizing a market. Under this argument, an upstream monopolist uses its market power to obtain exclusive distribution rights from its distributors, thereby foreclosing potential manufacturing entrants and obtaining additional market power. But there is problem with this argument, as Bork explains in The Antitrust Paradox (1978):

[The monopolist can extract in the prices it charges retailers all that the uniqueness of its line is worth. It cannot charge the retailers that full worth in money and then charge it again in exclusively the retailer does not wish to grant. To suppose that it can is to commit the error of double counting. If [the firm] must forgo the higher prices it could have demanded in order to get exclusivity, then exclusivity is not an imposition, it is a purchase. *Id.* at 306; *see also id.* at 140–43.

Although modern economic theory has established the theoretical possibility that a monopolist might, under very specific circumstances, outbid an entrant for the resources that would allow entry to occur (thus preserving the monopoly), modern theory also has shown that this is not a generally applicable result. It breaks down, for example, when (as is likely in MVPD markets) many units of new capacity are likely to become available sequentially. *See, e.g.*, Krishna, ''Auctions with Endogenous Valuations: The Persistence of Monopoly Revisited,'' 83 Am. Econ. Rev. 147 (1993); Malueg and Schwartz, ''Preemptive investment, toehold entry, and the mimicking principle,'' 22 RAND J. Econ. 1 (1991).

[10] If bundling is profitable for anticompetitive reasons, why do we not observe TW and TBS now exploiting all available opportunities to reap these profits?

[11] Perhaps this reflects the fact that the economics literature does not provide clear guidance on this issue. *See, e.g.*, Adams and Yellen, ''Commodity Bundling and the Burden of Monopoly,'' 90 Q.J. Econ. 475 (1976). Adams and Yellen explain how a monopolist might use bundling as a method of price discrimination. (This also was Stigler's explanation, *supra* n. 8.) As Adams and Yellen note, ''public policy must take account of the fact that prohibition of commodity bundling without more may increase the burden of monopoly * * * [M]onopoly itself must be eliminated to achieve high levels of social welfare.'' 90 Q.J. Econ. at 498. Adams and Yellen's conclusion is apposite here: if the combination of TW and TBS creates (or enhances) market power, then the solution is to enjoin the transaction rather than to proscribe certain types of bundling, since the latter ''remedy'' may actually make things worse. And if the acquisition does not create or enhance market power, the basis for the bundling proscription is even harder to discern.

[12] Among other things, the order (1) constrains the ability of TW and TCI to enter into long-term carriage agreements (¶ IV); (2) compels TW to sell Turner programming to downstream MVPD entrants at regulated prices (¶ VI); (3) prohibits TW from unreasonably discriminating against non-TW programmers seeking carriage on TW cable systems (¶ VII(C)); and (4) compels TW to carry a second 24-hour news service (*i.e.*, in addition to CNN) (¶ IX).

[13] Dissenting Statement of Commissioner Roscoe B. Starek, III, in Waterous Company, Inc./Hale Products, Inc., File No. 901 0061, 5 Trade Reg. Rep. (CCH) ¶ 24,076 at 23,888–90; Dissenting Statement of Commissioner Roscoe B. Starek, III, in Silicon Graphics, Inc. (Alias Research, Inc., and Wavefront Technologies, Inc.), Docket No. C–3626 (Nov. 14, 1995), 61 Fed. Reg. 16797 (Apr. 17, 1996); Remarks of Commissioner Roscoe B. Starek, III. ''Reinventing Antitrust Enforcement? Antitrust at the FTC in 1995 and Beyond,'' remarks before a conference on ''A New Age of Antitrust Enforcement: Antitrust in 1995'' (Marina Del Rey, California, Feb. 24, 1995) [available on the Commission's World Wide Web site at http://www.ftc.gov].

[14] I say ''inexplicably'' not because I necessarily believed this horizontal combination should have been enjoined, but because the horizontal aspect of the transaction would have exacerbated the upstream market power that would have had to exist for the vertical theories to have had any possible relevance.

to be mutually exclusive. The very possibility of excluding independent program vendors from TW and TCI cable systems suggests the means by which MVPDs other than TW and TCI can avoid foreclosure. The nonintegrated program vendors surely have incentives to supply the ''foreclosed'' MVPDs, and each MVPD has incentives to induce nonintegrated program suppliers to produce programming for it.[15]

In response to this criticism, one might argue—and the complaint alleges [16]—that pervasive scale economies in programming, combined with a failure to obtain carriage on the TW and TCI systems, would doom potential programming entrants (and ''foreclosed'' incumbent programmers) because, without TW and/or TCI carriage, they would be deprived of the scale economies essential to their survival. In other words, the argument goes, the competitive responses of ''foreclosed'' programmers and ''foreclosed'' distributors identified in the preceding paragraph never will materialize. There are, however, substantial conceptual and empirical problems with this argument, and its implications for competition policy have not been fully explored.

First, if one believes that programming is characterized by such substantial scale economies that the loss of one large customer results in the affected programmer's severely diminished competitive effectiveness (in the limit, that programmer's exit), then this essentially is an argument that the number of program producers that can survive in equilibrium (or, perhaps more accurately, the number of program producers in a particular program ''niche'') will be small—with perhaps only one survivor. Under the theory of the current case, this will result in a supracompetitive price for that program. Further, this will occur irrespective of the degree of vertical integration between programmers and distributors. Indeed, under these circumstances, there is a straightforward reason why vertical integration between a program distributor and a program producer would be both profitable and procompetitive (*i.e.*, likely to result in lower prices to consumers): Instead of monopoly markups by both the program producer and the MVPD, there would be only one markup by the vertically integrated firm.[17]

Second, and perhaps more important, if the reasoning of the complaint is carried to its logical conclusion, it constitutes a basis for challenging any vertical integration by large cable operators or large programmers—even if that vertical integration were to occur via *de novo* entry by an operator into the programming market, or by *de novo* entry by a programmer into distribution. Consider the following hypothetical: A large MVPD announces both that it intends to enter a particular program niche and that it plans to drop the incumbent supplier of that type of programming. According to the theory underlying the proposed complaint, the dropped program would suffer substantially from lost scale economies, severely diminishing its competitive effectiveness, which in turn would confer market power on the vertically integrated entrant in its program sales to other MVPDs. Were the Commission to apply its current theory of competitive harm consistently, it evidently would have to find this *de novo* entry into programming by this large MVPD competitively objectionable.

I suspect, of course, that virtually no one would be comfortable challenging such integration, since there is a general predisposition to regard expansions of capacity as procompetitive.[18] Consequently, one might attempt to reconcile the differential treatment of the two forms of vertical integration by somehow distinguishing them from each other.[19] But in truth, the situations actually merit similar treatment—albeit not the treatment prescribed by the proposed order. In neither case should an enforcement action be brought, because any welfare loss flowing from either scenario derives from the structure of the upstream market, which in turn is determined primarily by the size of the market and by technology, not by the degree of vertical integration between different stages of production.

Third, it is far from clear that TCI's incentives to preclude entry into programming are the same as TW's.[20] As an MVPD, TCI is harmed by the creation of entry barriers to new programming. Even if TW supplies it with TW programming at a competitive price, TCI is still harmed if program variety or innovation is diminished. On the other hand, as a part owner of TW, TCI benefits if TW's programming earns supracompetitive returns on sales to other MVPDs. TCI's net incentive to sponsor new programming depends on which factor dominates—its interest in program quality and innovation, or its interest in supracompetitive returns on TW programming. All of the analyses of which I am aware concerning this tradeoff show that TCI's ownership interest in TW would have to increase substantially—far beyond what the current transaction contemplates, or what would be possible without a significant modification of TW's internal governance structure [21]—for TCI to have an incentive to deter entry by independent programmers. TCI's incentive to encourage programming

[15] Moreover, as was also true in SGI, the proposed complaint in the present case characterizes premerger entry conditions in a way that appears to rule out significant anticompetitive foreclosure of nonintegrated upstream producers as a consequence of the transaction. Paragraphs 33, 34, and 36 of the complaint allege in essence that there are few producters of ''marquee'' programming before the merger (other than TW and TBS), in large part because entry into ''marquee'' programming is so very difficult (stemming form, *e.g.*, the substantial irreversible investments that are required). If that is true—*i.e.*, if the posited programming market already was effectively foreclosed before the merger—then, as in SGI, TW's acquistion of TBS could not cause substantial postmerger foreclosure of competitively significant alternatives to TW/TBS programming.

[16] *See* Paragraph 38.b of the proposed complaint.

[17] *See, e.g.,* Tirole, The Theory of Industrial Organization 174–76 (1988). The program price reductions would be observed only in those geographic markets where TW owned cable systems. Thus, the greater the number of cable subscribers served by TW, the more widespread would be the efficiencies. According to the proposed complaint (¶ 32), TW cable systems serve only 17 percent of cable subscribers nationwide, so one might argue that the efficiencies are accordingly limited. But this, of course, leaves the Commission in the uncomfortable position of arguing that TW's share of total cable subscribership is too small to yield significant efficiencies, yet easily large enough to generate substantial ''foreclosure'' effects.

[18] This would appear true especially when, as posited here, there is substantial premerger market power upstream because, under such circumstances, vertical integration is a means by which a downstream firm can obtain lower input prices. As noted earlier (*supra* n.17 and accompanying text), this integration can be procompetitive whether it occurs via merger or internal expansion.

[19] One might attempt to differentiate my hypothetical from a situation involving an MVPD's acquisition of a program supplier by arguing that the former would yield two suppliers of the relevant type of programming, but the latter only one. But this conclusion would be incorrect. If we assume that the number of suppliers that can survive in equilibrium is determined by the magnitude of scale economies relative to the size of the market, and that the pre-entry market structure represented an equilibrium, then the existence of two program suppliers will be only a transitory phenomenon, and the market will revert to the equilibrium structure dictated by these technological considerations—that is, one supplier. Upstream integration by the MVPD merely replaces one program monopolist with another; but as noted above, under these circumstances vertical integration can yield substantial efficiencies.

[20] Even TW has mixed incentives to preclude programming entry. As a programmer allegedly in possession of market power, TW would wish to deter programming entry to protect this market power. But as a MVPD, TW—like any other MVPD—benefits from the creation of valuable new programming servics that it can sell to its subscribers. On net, however, it appears true that TW's incentives balance in favor of wishing to prevent entry.

[21] TW has a ''poison pill'' provision that would make it costly for TCI to increase its ownership of TW above 18 percent.

entry is intensified, moreover, by the fact that it has undertaken an ambitious expansion program to digitize its system and increase capacity to 200 channels. Because this appears to be a costly process, and because not all cable customers can be expected to purchase digital service, the cost per buyer—and thus the price—of digital services will be fairly high. How can TCI expect to induce subscribers to buy this expensive service if, through programming foreclosure, it has restricted the quantity and quality of programming that would be available on this service tier?[22]

The foregoing illustrates why foreclosure theories fell into intellectual disrepute: because of their inability to articulate how vertical integration harms competition and not merely competitors. The majority's analysis of the Program Service Agreement (''PSA'') illustrates this perfectly. The PSA must be condemned, we are told, because a TCI channel slot occupied by a TW program is a channel slot that cannot be occupied by a rival programmer. As Bork noted, this is a tautology, not a theory of competitive harm.[23] It is a theory of harm to competitors—competitors that cannot offer TCI inducements (such as low prices) sufficient to cause TCI to patronize them rather than TW.

All of the majority's vertical theories in this case ultimately can be shown to be theories of harm to competitors, not to competition. Thus, I have not been persuaded that the vertical aspects of this transaction are likely to diminish competition substantially. Even were I to conclude otherwise, however, I could not support the extraordinarily regulatory remedy contained in the proposed order, two of whose provisions merit special attention: (1) The requirement that TW sell programming to MVPDs seeking to compete with TW cable systems at a price determined by a formula contained in the order; and (2) the requirement that TW carry at least one ''Independent Advertising-Supported News and Information National Video Programming Service.''

Under Paragraph VI of the proposed order, TW must sell Turner programming to potential entrants into TW cable markets at prices determined by a ''most favored nation'' clause that gives the entrant the same price—or, more precisely, the same ''carriage terms''—that TW charges the three largest MVPDs currently carrying this programming. As is well known, most favored nation clauses have the capacity to cause all prices to rise rather than to fall.[24] But even putting this possibility aside, this provision of the order converts the Commission into a *de facto* price regulator—a task, as I have noted on several previous occasions, to which we are ill-suited.[25] During the investigation third parties repeatedly informed me of the difficulty that the Federal Communications Commission has encountered in attempting to enforce its nondiscrimination regulations. The FTC's regulatory burden would be lighter only because, perversely, our pricing formula would disallow any of the efficiency-based rationales for differential pricing recognized by the Congress and the FCC.[26]

Most objectionable is Paragraph IX of the order, the ''must carry'' provision that compels TW to carry an additional 24-hour news service. I am baffled how the Commission has divined that consumers would prefer that a channel of supposedly scarce cable capacity be used for a second news service, instead of for something else. More generally, although remedies in horizontal merger cases sometimes involve the creation of a new competitor to replace the competition eliminated by the transaction, no competitor has been lost in the present case. Indeed, there is substantial entry already occurring in this segment of the programming market, notwithstanding the severe ''difficulty'' of entering the markets alleged in the complaint.[27] Obviously, the incentives to buy programming from an independent vendor are diminished (all else held constant) when a distributor integrates vertically into programming. This is true whether the integration is procompetitive or anticompetitive on net, and whether the integration occurs via merger or via *de novo* entry.[28] I could no more support a must-carry provision for TW as a result of its acquisition of CNN than I could endorse a similar requirement to remedy the ''anticompetitive consequences'' of *de novo* integration by TW into the news business.

[FR Doc. 96–24599 Filed 9–24–96; 8:45 am]

BILLING CODE 6750–01–P

[22] Note too that there is an inverse relationship between TCI's ability to prevent programming entry and its incentives to do so. Much of the analysis in this case has emphasized that TCI's size (27 percent of cable households) gives it considerably ability to determine which programs succeed and which fail, and the logic of the proposed complaint is that TCI will exercise this ability so as to protect TW's market power in program sales to non-TCI MVPDs. But although increases in TCI's size may increase its ability to preclude entry into programming, at the same time such increases reduce TCI's incentives to do so. The reasoning is simple: as the size of the non-TW/non-TCI cable market shrinks, the supracompetitive profits obtained from sales of programming to this sector also shrink. Simultaneously, the harm from TCI (as a MVPD) from precluding the entry of new programmers increases with TCI's subscriber share. (In the limit—i.e., if TCI and TW controlled all cable households—there would be non non-TW/non-TCI MVPDs, no sales of programming to such MVPDs, and thus no profits to be obtained from such sales.) Any future increases in TCI's subscriber share would, other things held constant, reduce is incentives to ''foreclose;'' entry by independent programmers.

[23] /Bork, The Antitrust Paradox, *supra* n.9, at 304.

[24] *See, e.g., RxCare of Tennessee, Inc., et al.,* Docket No. C–3664, 5 *Trade Reg. Rep.* (CCH) ¶ 23,957 (June 10, 1996); *see also* Cooper and Fries, ''The most-favored-nation pricing policy and negotiated prices,'' 9 *int'l J. Ind. Org.* 209 (1991). The logic is straightforward: if by cutting price to another (noncompeting) MVPD TW is compelled also to cut price to downstream competitors, the incentives to make this price cut is diminished. Although this effect might be small in the early years of the order (when the gains to TW from cutting price to a large independent MVPD might swamp the losses from cutting price to its downstream competitors) its magnitude will grow over the order's 10-year duration, as TW cable systems confront greater competition.

[25] *See* my dissenting statements in *Silicon Graphics* and *Waterous/Hale, supra* n.13.

[26] Mirroring the applicable statute, the FCC rules governing the sale of cable programming by vertically integrated programmers to nonaffiliated MVPDs allow for price differentials reflecting, *inter alia,* ''economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor.'' 47 U.S.C. § 548(c)(2)(B)(iii); 47 C.F.R. 76.1002(b)(3).

[27] The Microsoft/NBC joint venture, MSNBC, already is in service; the Fox entry apparently will also be operational shortly.

[28] The premise inherent in this provision of the order is that TW can ''foreclose'' independent programming entry in independently (*i.e.,* without the cooperation of TCI, whose incentives to sponsor independent programming are ostensibly preserved by the stock ownership cap contained in Paragraphs II and III of the order). Given that TW has only 17 percent of total cable subscribership, I find this proposition fanciful.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Request for Nominations of Candidates to Serve on the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Hanford Health Effects Subcommittee

The Agency for Toxic Substances and Disease Registry and the Centers for Disease Control and Prevention are soliciting additional nominations for possible membership on the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee.

The Subcommittee is charged with providing advice and recommendations to the Director, Centers for Disease

Control and Prevention (CDC), and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR. The Hanford Health Effects Subcommittee (HHES) was established to advise the ATSDR and CDC on human health studies and public health activities that the agencies may undertake to address human exposures to historical releases of hazardous materials from the Hanford Nuclear Reservation in eastern Washington State.

Nominiations are being sought to broaden the pool of available expertise, including the areas of occupational/environmental public health, social sciences/psychology, and science/health physics. Close attention will be given to minority and female representation so long as the effectiveness of the Subcommittee is not impaired.

Nominations for new members will be accepted by fax or written correspondence. Submissions must include the nominee's qualifications to serve, personal assets for working on the Subcommittee, and a current resume or curriculum vitae. The closing date for nominations is October 15, 1996.

Nominations should be sent to: Mr. James K. Carpenter, Executive Secretary, HHES, 1600 Clifton Road, NE, M/S E–28, Atlanta, Georgia 30333; Fax 404/639–0759, E-Mail jkc1@atsoaa1.em.cdc.gov.

Dated: September 18, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–24547 Filed 9–24–96; 8:45 am]

BILLING CODE 4163–70–M

Centers for Disease Control and Prevention

The National Center for HIV, STD, and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) Announces the Following meeting

Name: Consultation on Partner Notification Program Policies in Disease Control Efforts Conducted by Public Health Programs in the United States.

Time and Date: 8 a.m.–5 p.m., October 17, 1996; 8 a.m.–1 p.m., October 18, 1996.

Place: Atlanta Marriott North Central, 2000 Century Boulevard NE, Atlanta, Georgia, 30345, telephone 404/325–0000, fax 404/325–4920.

Status: Open to the public for participation, comment, and observation, limited only by the space available. The meeting room accommodates approximately 65 people.

Purpose: To invite comment from recognized representatives of public health agencies and the public on proposed public health principles and practices of partners notification services used to control infectious diseases such as HIV and STD in the United States.

Currently CDC requires all health department recipients of HIV prevention funding to ''establish standards and implement procedures for partner notification consistent with State/local needs, priorities, and resources availability.'' Summarily, STD cooperative agreements also require grantees to have provisions for partner notification services.

Matters to be discussed: The panel of expert consultants will examine future directions in partner notification policy, practice and research for the purpose of disease control in the United States concerning HIV and STD.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Jill Leslie, Division of HIV/AIDS Prevention, NCHSTP, CDC, M/S E40, 1600 Clifton Road, NE, Atlanta, Georgia 30303, telephone 404/639–2918.

Dated: September 19, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–24548 Filed 9–24–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96N–0075]

Hance Brothers and White Co., et al.; Withdrawal of Approval of 16 Abbreviated Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing 3 abbreviated antibiotic applications (AADA'S) and 13 abbreviated new drug applications (ANDA's). The basis for the withdrawals is that the sponsors have repeatedly failed to file required annual reports for these applications.

EFFECTIVE DATE: September 25, 1996.

FOR FURTHER INFORMATION CONTACT: Olivia A. Vieira, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs or antibiotics for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81).

In the Federal Register of March 15, 1996 (61 FR 10768), FDA offered an opportunity for a hearing on a proposal to withdraw approval of 17 abbreviated applications because the firms had failed to submit the required annual reports for these applications.

One application holder, Superpharm Corp. notified the agency in writing that ANDA 89–184, Acetaminophen and Codeine Phosphate Tablets, is no longer marketed and requested that approval of the application be withdrawn. FDA withdrew approval of ANDA 89–184 in the Federal Register of August 5, 1996 (61 FR 40649).

The holders of the other 16 applications did not respond to the notice of opportunity for a hearing. Failure to file a written notice of participation and request for a hearing as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products.

Therefore, the Director, Center for Drug Evaluation and Research, is withdrawing approval of the applications listed in the table in this document.

Application no.	Drug	Applicant
AADA 60–276	Neomycin and Polymyxin B Sulfates and Bacitracin Ointment	Hance Brothers and White Co.
AADA 60–422	Tetracycline Hydrochloride Tablets	Premo Pharmaceutical Laboratories, Inc.
AADA 62–362	Erythromycin Estolate Suspension, 250 milligrams (mg) per 5 milliliters (mL).	Life Laboratories, Inc.
ANDA 80–126	Isoniazid Tablets, 300 mg	Everylife.
ANDA 80–689	Cyanocobalamin Injection, USP, 30 micrograms (μg) per mL, 100 μg/mL, and 100 μg/mL.	Dell Laboratories, Inc.
ANDA 83–387	Lidocaine Hydrochloride Injection, USP, 1%	Do.
ANDA 83–388	Lidocaine Hydrochloride Injection, USP, 2%	Do.
ANDA 83–665	Vitamin A Capsules, USP	Wharton Laboratories.
ANDA 83–771	Pyridoxine Hydrochloride Injection, USP, 50 mg/mL	Dell Laboratories, Inc.
ANDA 83–772	Pyridoxine Hydrochloride Injection, USP, 100 mg/mL	Do.
ANDA 83–775	Thiamine Hydrochloride Injection, USP, 100 mg/mL	Do.
ANDA 86–519	Chlorpheniramine Maleate Tablets, USP, 4 mg	Newtron Pharmaceuticals, Inc.
ANDA 86–987	Brompheniramine Maleate Tablets, USP, 4 mg	Do.
ANDA 87–791	Fluorouracil Injection, 50 mg/mL	Marcher Laboratories, Ltd.
ANDA 88–871	Hydrocodone Bitartrate and Acetaminophen, 5 mg/500 mg	Abana Pharmaceuticals, Inc.
ANDA 89–538	Meprobamate Tablets, USP, 400 mg	K. M. Lee Laboratories.

The Director, Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority of 21 CFR 5.82, finds that the holders of the applications listed above have repeatedly failed to submit reports required by § 314.81. Therefore, under this finding, approval of the applications listed above, and all amendments and supplements thereto, is hereby withdrawn, effective September 25, 1996.

Dated: August 25, 1996.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 96–24610 Filed 9–24–96; 8:45 am]

BILLING CODE 4160–01–F

Pesticide Residue Monitoring Data Base for Fiscal Year 1995; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Fiscal Year (FY) 1995 pesticide residue monitoring data on computer diskettes. This is the fourth annual comprehensive compilation and public release of FDA monitoring data for pesticide residues in foods. The agency is making the information available on computer diskettes to facilitate its dissemination to interested persons.

ADDRESSES: Pesticide residue monitoring data on computer diskettes may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB96–503156 and include a payment of $50.00 for each copy of the data base. In addition, there is a handling fee of $4.00 for one copy of the data base, $6.00 for two copies, and $8.00 for three or more copies. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or by billing arrangements made with NTIS. Charge card orders must include the charge account number and expiration date. For telephone orders or further information on placing an order call NTIS at 703–487–4650.

FOR FURTHER INFORMATION CONTACT: Byron O. Bohannon, Center for Food Safety and Applied Nutrition (HFS–308), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4152.

SUPPLEMENTARY INFORMATION: FDA is making available its FY 95 pesticide residue monitoring data as a set of three personal computer diskettes. The data base includes FDA pesticide monitoring coverage and findings for FY 95 by country/food product/pesticide combination. The data base is accompanied by a search program and report formats, written in dBase III+. Each year FDA receives numerous requests for these data. FDA has determined that it will facilitate dissemination of these data to interested persons if the agency provides for their general availability in a standardized diskette. A user's manual is provided that contains installation instructions and describes the structure and content of the data base.

Dated: September 19, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–24611 Filed 9–24–96; 8:45 am]

BILLING CODE 4160–01–F

Indian Health Service

Submission for OMB review; Comment Request, Indian Health Service Loan Repayment Program

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection activity was previously published in the Federal Register (61 FR 17903) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow 30 days for public comments to be submitted to the OMB. The IHS may not conduct or sponsor, and the respondent is not required to respond to any information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: Title: Indian Health Service Loan Repayment Program (LRP). Type of Information Collection Request: A 3-year reinstatement with change of previously approved information collection 0917–0014, ''Indian Health Service Loan Repayment Program.'' Need and Use of Information Collection: The information is needed to identify and select qualified health professionals to fill priority health professional vacancies at IHS health care facilities. The information collected is used to: evaluate applicant eligibility; rank and prioritize applicants by specialty; assign applicants to IHS health care facilities; determine payment amounts and schedules for paying the lending institutions; and, to provide data and statistics for program management

review and analysis. The annual burden hour estimate for this information collection activity follows:

IHS LRP application	No. of respondents	Responses per respondent	Average burden per response (hours) [1]
Section I	350	1	0.25 (15 mins.)
Section II	350	1	0.50 (30 mins.)
Section III	350	4	0.25 (15 mins.)
Contract	350	1	0.334 (20 mins.)
Affidavit	350	1	0.167 (10 mins.)
Lender Cert	1400 [2]	1	0.25 (15 mins.)

[1] Provided in decimal unit values of an hour and in actual minutes.
[2] Based on average number of repayment loans per application.

REQUEST FOR COMMENTS: Written comments and suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the information collection activity is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine the estimate; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS. To request more information on the proposed information collection activity or to obtain a copy of the data collection plan(s) and/or instrument(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Plaza, Suite 450, Rockville, MD 20857; or call non-toll-free number (301) 443–0461; or send via facsimile to (301) 443–1522 or Internet (include your address) to: Lhodahkw@ihs.ssw.dhhs.gov.

COMMENTS DUE DATE: Comments regarding this information collection activity are best assured of having their full effect if received on or before October 25, 1996.

Dated: September 9, 1996.
Michael H. Trujillo,
Assistant Surgeon General Director.
[FR Doc. 96–24571 Filed 9–24–96; 8:45 am]
BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. 795938

Applicant: Dana C. Bland, Aptos, California. The applicant requests an amendment of her permit to take the Santa Cruz long-toed salamander (*Ambystoma macrodactlyum croceum*) to include toe-clipping adults and juveniles, and collection of voucher specimens in conjunction with distribution and abundance studies in Santa Cruz County, California for the purpose of enhancing the survival of the species.

Permit No. 815529

Applicant: Sierra View Landscape, Carmichael, California. The applicant requests a permit to: take (collect, relocate, and release) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), vernal pool fairy shrimp (*Branchinecta lynchi*) and the valley elderberry longhorn beetle (*Desmocerus californicus demorphus*); and remove and reduce to possession the Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*) and Crampton's tuctoria (*Tuctoria mucronata*) throughout the range of these species in northern California to restore, augment, and create populations and habitat for the purpose of enhancing their survival.

Permit No. 815539

Applicant: Michael S. Marangio, San Francisco, California. The applicant requests a permit to take (harass by survey, capture, and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactlyum croceum*), and the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with presence and absence surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. 817399

Applicant: Susan V. Christopher, Santa Barbara, California. The applicant requests a permit to take (harass by survey, capture, and release) the arroyo southwestern toad (*Bufo microscaphus californicus*) in conjunction with presence and absence surveys within San Diego, Los Angeles, Riverside, Ventura, Santa Barbara, San Luis Obispo, Monterey, Orange, and Kern Counties, California for the purpose of enhancing its survival.

Permit No. 702631

Applicant: Assistant Regional Director-Ecological Services, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon. The applicant requests amendment of his permit to include authorization to remove and reduce to possession specimens of the following plant species: *Pritchardia aylmer-robinsonii* (wahane), *Amaranthus brownii* (plant, no common name), *Pritchardia remota* (loulu), and *Schiedea verticillata* (plant, no common name) throughout their range for recovery efforts in order to enhance their propagation and survival.

DATES: Written comments on these permit applications must be received on or before October 25, 1996.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: September 13, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–24546 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WO–480–1610–02–24 1A]

Approval of Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request approval from the Office of Management and Budget (OMB) to collect certain information from individuals and groups protesting proposed decisions in regional land-use plans, called ''resource management plans'' or ''management framework plan amendments.'' The BLM will use this information to process and respond to requests for administrative review (protests) of these decisions by affected individuals and groups.

DATES: The BLM must receive comments on the proposed information collection by November 25, 1996 to assure its consideration of them.

ADDRESSES: Mail comments to: Director (480), Bureau of Land Management, 1849 C Street NW., Room 1075LS, Washington, DC 20240.

Send comments via Internet to: WoComment@wo0033wp.wo.blm.gov. Please include ''ATTN: 1004–PLAN'' and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

The BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carole Smith, Resource Planning Team, (202) 452–0367.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the Federal Register concerning a collection of information contained in a published current rule to solicit comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

The BLM prepares, amends and revises land-use plans through the authority of the Federal Land Policy and Management Act. Section 202 of the Federal Land Policy and Management Act requires the BLM to prepare land-use plans, which contain decisions authorizing managers to take actions to allocate, eliminate or restrict resource and land uses on public lands. The implementing regulations are found at 43 CFR Subpart 1610. The regulations were issued on May 5, 1983, 48 FR 20368.

Protests are part of the Department of the Interior's responsibility to adjudicate disputes over public lands, a responsibility it has had since its beginning in March 1849. Individuals and groups protesting proposed decisions contained in land-use plans are required to provide the information identified at 43 CFR Subpart 1610. The BLM requires no special form or format for the information supplied by protestants. The information required from each protestants is (1) name, mailing address, telephone number and interest, (2) a statement of the issue(s) being protested, (3) a statement of the part(s) of the plan or amendment being protested, (4) a copy of all documents addressing the issue supplied during the planning process or information about the date that the issue(s) were discussed and (5) a concise statement explaining why the decision is erroneous.

The BLM uses the information provided by the applicant to review the process used in reaching the proposed decision and determine whether or not procedures were followed and whether or not the decision maker relied on erroneous information in mailing the decision. If the BLM did no collect this information, it could not determine whether or not BLM officials followed correct procedures in preparing land-use plans and in making resource use and allocation decisions.

Based on the BLM's experience administering the activities described above, the public reporting burden for the information collected is estimated to average 2 hours per response. The respondents are individuals and groups that believe that proposed decisions affect or could adversely affect their interests. The frequency of response is occasionally, whenever the BLM issues a resource management plan or plan amendment affecting or potentially affecting their interests. The number of responses per year is estimated to be about 50. The estimated total annul burden on new respondents is about 100 hours. The BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a protest and the steps involved in preparing a protest. The BLM's estimate is 2 hour per protest.

The BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: September 18, 1996.

Dr. Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–24580 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–84–M

[CA–060–06–1990–00]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a 3-day field meeting on Thursday, October 24 and Friday, October 25, 1996, from 8:00 a.m. to 5:00 p.m., and Saturday, October 26 from 8:00 a.m. to 12 noon. The council will establish a base camp at BLM's Owl Canyon Campground, located off State Highway 58 approximately eight miles north of Barstow. The Council Chair will announce alternative meeting arrangements Thursday morning should inclement weather become an issue.

Council members and the public will assemble for the Thursday field tour at the Barstow Resource Area office, located at 150 Coolwater Lane at 7:45 a.m., and depart at 8:00 a.m. Tour discussions will focus on vegetation. The first stop will be along the Harper Lake Road, and then proceed to the Harper Dry Lake Area of Critical Environmental Concern. The tour will continue to the Coolgardie area, where the council will be briefed on mining-related issues. The tour will conclude at Owl Canyon Campground.

Council members and members of the public will assemble at 7:15 a.m., at Owl Canyon Campground for the Friday field tour and depart at 7:30 a.m. The first stop will be Afton Canyon. BLM staff and council members will discuss vegetation and grazing issues. The tour will proceed to the Razor Off-Highway Vehicle open area to discuss vegetation, resource management, and the proposed recreation fee demonstration projects. The last stop will be at Silurian Dry Lake for a briefing on the proposed Fort Irwin expansion. The tour will return to Owl Canyon Campground.

Members of the public are welcome to camp out with the council at Owl Canyon Campground and participate in the field tours. They should dress appropriately and provide their own transportation, camping gear, food, and beverage. Anyone interested in participating in the camp-out should contact BLM at (909) 697–5215 for more information.

The Saturday council meeting will begin at 8 a.m. at Owl Canyon Campground. The council will review the Thursday and Friday tours and discussions. Additional topics will include the District Manager and Area Manager reports, the Advisory Council meeting schedule, and the public comment period.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION:

Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714; (909) 697–5215.

Dated: September 19, 1996.

Jo Simpson,

Assistant District Manager, External Affairs.

[FR Doc. 96–24545 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–84–M

[COC–59565, COC–59571; CO–050–1430–01]

Notice of Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Teller and Boulder Counties Colorado.

SUMMARY: The following described land has been examined and found suitable for disposal under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value:

6th Principal Meridian, Colorado T. 15 S., R. 70 W., Sections 13 and 14: parcel A, as recorded in Teller County, Colorado Clerk and Recorders Office in Book 1–LS at Page 204; contains 3.921 acres. The land will be offered by direct sale to the Cripple Creek-Victor School District Re–1. T. 1 N., R. 71 W., Section 8: Lot 140; contains 0.06 acres.

The land will be offered by direct sale to Tom Stevens.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until the land is sold or 2 years from publication of this notice, whichever occurs first. Detailed information concerning this disposal, including dates, price, patent reservations, procedures, etc. will be available upon request.

ADDRESSES: Bureau of Land Management, Canon City District, 3170 East Main Street, Canon City, Colorado 81212.

DATES: Interested parties may submit comments to the District Manager at the above address until November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Lindell Greer, Realty Specialist at (719) 269–8532.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, and he may vacate, modify, or continue this realty action.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 96–24560 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–JB–P

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

DATES: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825, 916–979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Humboldt Meridian, California

T. 5 N., R. 6 E.,

Dependent resurvey, subdivision of sections, and metes-and-bounds survey, and survey, (Group 1002) accepted August 1, 1996, to meet certain

administrative needs of the US Forest Servcie, Shasta-Trinity National Forest.

FR. T. 6 N., R. 1 W.,
Dependent resurvey subdivision of section 26, metes-and-bounds survey, (Group 1233) accepted August 2, 1996, to meet certain administrative needs of the BLM, Arcata Resource Area.

Mount Diablo Meridian, California

T. 37 N., R. 11 W.,
Dependent resurvey, subdivision of section 11, and metes-and-bounds survey, (Group 1152) accepted June 6, 1996, to meet certain administrative needs of the US Forest Service, Klamath and Shasta-Trinity National Forests.

T. 8 S., R. 33 E.,
Corrective dependent resurvey, (Group 1235) accepted August 1, 1996, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Resource Area.

T. 2 N., 14 E.,
Supplemental plat of the NE¼ of the SW¼ of section 29, accepted August 6, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 30 S., R. 33 E.,
Dependent resurvey and metes-and-bounds survey of lot 20 in section 21, (Group 1224) accepted August 7, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

T. 16 N., R. 8 W.,
Dependent resurvey and metes-and-bounds survey of tract 37, (Group 1189) accepted August 13, 1996, to meet certain administrative needs of the US Forest Service, Mendocino National Forest.

T. 27 S., R. 35 E.,
Dependent resurvey and metes-and-bounds survey, (Group 1123) accepted August 13, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

T. 21 N., R. 16 E.,
Dependent resurvey and subdivision of sections, (Group 1144) accepted August 19, 1996, to meet certain administrative needs of the US Forest Service, Tahoe and Toiyabe National Forests.

Fr. T. 32 N., R. 11 E.,
Dependent resurvey, and subdivision of sections 11, 12, 13, and 14, (Group 1173) accepted August 21, 1996, to meet certain administrative needs of the BLM, Eagle Lake Resource Area.

T. 16 N., R. 9 E.,
Supplemental plat of the S ½ of section 4, accepted August 22, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 14 N., R. 9 E.,
Supplemental plat of section 25, including resurvey, and metes-and-bounds survey, (Group 1251) accepted August 22, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 2 S., R. 26 E.,
Supplemental plat of section 14, accepted August 29, 1996, to meet certain administrative needs of the Forest Service, Inyo National Forest.

San Bernardino Meridian, California

T. 1 S., R. 17 W.,
Dependent resurvey, metes-and-bounds survey, and subdivision of section 7, (Group 1210) accepted August 21, 1996, to meet certain administrative needs of the National Park Service, Santa Monica National Recreation Area.

T. 4 N., R. 14 W.,
Dependent resurvey and subdivision, (Group 1200) accepted August 22, 1996, to meet certain administrative needs of the US Forest Service, Angeles National Forest.

T. 12 S., R. 10 E.,
Dependent resurvey, (Group 1163) accepted August 26, 1996, to meet certain administrative needs of the BLM, California Desert District, El Centro Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: September 6, 1996.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 96–24446 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–40–M

National Park Service

Land Acquisition Plan for Saint-Gaudens National Historic Site, New Hampshire; Notice of Availability and Public Comment Period

In accordance with the National Park Service (36 CFR Ch 1) instructions for the preparation of land protection plans and the Department of the Interior's policy for the Federal Portion of the Land and Water Conservation Fund (47 FR 19784); a proposed Land Acquisition Plan for the Saint-Gaudens National Historic Site, National Park Service, is available for public review from September 27, 1996 at the Park Offices, off NH 12 A in Cornish, New Hampshire.

The proposed Land Acquisition Plan details long-range proposals for additions of five parcels of two different types and priority of their acquisition.

The public is invited to review the Plan; copies of which are available at the park office, as well as the Cornish town offices and on the Internet: http://www.valley.net/stgaud/saga.html.

Comments will be received from September 27 through October 14, 1996, and will be considered in the final review. The offices of the park are open 8:00 am to 4:30 pm, Monday through Friday.

Dated: September 17, 1996

John H. Dryfhout,

Superintendent.

[FR Doc. 96–24572 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–70–P

Niobrara National Scenic River Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara National Scenic River Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: Wednesday, October 9, 1996; 1:30 p.m.

ADDRESSES: The Peppermill Restaurant Meeting Room, Valentine, Nebraska.

AGENDA: (1) Review of final Niobrara National Scenic River General Management Plan and Environmental Impact Report; (2) Discussion of steps involved in the formation of the Niobrara Council; (3) The opportunity for public comment and proposed agenda, date, and time, of the next Advisory Group meeting. The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chair may want to limit or schedule public presentations. The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. A copy of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

FOR FURTHER INFORMATION CONTACT: Superintendent Warren Hill, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, or at 402–336–3970.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Niobrara

National Scenic River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the Scenic River. The Niobrara National Scenic River includes the 40-mile segment from Borman Bridge southeast of Valentine, Nebraska to its confluence with Chimney Creek; and the 30-mile segment from the confluence with Rock Creek downstream to State Highway 137.

Dated: September 8, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–24555 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–70–P

Sleeping Bear Dunes National Lakeshore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

DATE AND TIME: Friday, October 18, 1996; 9:30 a.m. until 12 noon.

ADDRESS: Sleeping Bear Dunes National Lakeshore Headquarters, Empire, Michigan. The agenda for the meeting consists of the Chairman's welcome; minutes of the previous meeting; statement of purpose; public input; update on park activities; old business; new business; next meeting date; adjournment. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Superintendent Ivan Miller, 9922 Front Street, Empire, Michigan 49630; or telephone 616–326–5134.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, Public Law 91–479. The purpose of the commission, according to its charter, is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction, and administration of scenic roads, procurement of land, condemnation of commercial property, and the preparation and implementation of the land and water use management plan.

Dated: September 18, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–24556 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contractors in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water uses reasonably achievable by all MP Region's contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the Federal Register and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be reviewed by Reclamation by October 25, 1996.

ADDRESSES: Please mail comments to the address provided below.

FOR FURTHER INFORMATION CONTACT: Tracy Slavin, Bureau of Reclamation, 2800 Cottage Way, MP–402 Sacramento, CA 95825. To be placed on a mailing list for any subsequent information, please write Tracy Slavin or telephone at (916) 979–2384.

SUPPLEMENTARY INFORMATION: Under provisions of Section 3405(e) of the CVPIA (Title 34 of Public Law 102–575), ''The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria. For evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria will be developed '' * * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public
2. Describe the district
3. Inventory water resources
4. Review the past water conservation plan and activities
5. Identify best management practices to be implemented
6. Develop schedules, budgets, and projected results
7. Review, evaluate, and adopt the water conservation plan
8. Implement, monitor, and update the water conservation plan

The MP contractors listed below have developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Alpaugh Irrigation District.
- East Bay Municipal Utilities District.
- Santa Ynez River Water Conservation District.

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plans, please contact Mr. Slavin to find the office nearest you.

Dated: September 17, 1996.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 96–24542 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–94–M

Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: Title XII of Public Law 103–434 directs the Secretary of the Interior, in consultation with the State of Washington, the Yakima Indian Nation, Yakima River Basin irrigators and other interested parties, to establish the Yakima River Basin Water Conservation Advisory Group within 12 months of enactment. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Meetings will be held:

- October 29–30, 1997, at the Bureau of Reclamation, 1917 Marsh Road, Yakima, Washington, 9 a.m.–4 p.m.
- December 11–12, 1996, at the Bureau of Reclamation, 1917 Marsh Road, Yakima, Washington, 9 a.m.–4 p.m.
- January 21–22, 1997, at the Bureau of Reclamation, 1917 Marsh Road, Yakima, Washington, 9 a.m.–4 p.m.

FOR FURTHER INFORMATION CONTACT: Walt Fite, Program Manager, Yakima River Water Enhancement Project, PO Box 1749, Yakima, Washington 98907; (509) 575–5848 ext. 267.

SUPPLEMENTARY INFORMATION: The Basin Conservation Program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

Dated: September 11, 1996.

Jim Cole,

Manager, Upper Columbia Area Office.

[FR Doc. 96–24488 Filed 9–24–96; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–740 (Final)]

Sodium Azide From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–740 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Japan of sodium azide, provided for in subheading 2850.00.50 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: August 16, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of sodium azide from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 16, 1996, by American Azide Corporation.

[1] For purposes of this investigation, Commerce has defined the subject merchandise as ''sodium azide (NaN_3) regardless of use, and whether or not combined with silicon oxide (SiO_2) or any other inert flow assisting agent.''

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on December 12, 1996, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on January 7, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 16, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement

at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 18, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 20, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 14, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigations on or before January 14, 1997. On January 28, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 30, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: September 20, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–24597 Filed 9–24–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–750 (Preliminary)]

Vector Supercomputers From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury [2] by reason of imports from Japan of vector supercomputers, provided for in heading 8471 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, as amended in 61 FR 37818 (July 22, 1996), the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the Federal Register as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 703(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 705(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On July 29, 1996, a petition was filed with the Commission and the Department of Commerce by Cray Research, Inc., Eagan, MN, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of vector supercomputers from Japan. Accordingly, effective July 29, 1996, the Commission instituted antidumping Investigation No. 731–TA–750 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of August 7, 1996 (61 FR 41181). The conference was held in Washington, DC, on August 20, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 12, 1996. The views of the Commission are contained in USITC Publication 2993 (September 1996), entitled ''Vector Supercomputers from Japan: Investigation No. 731–TA–750 (Preliminary).''

Issued: September 18, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–24596 Filed 9–24–96; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Nuzum dissenting and Commissioners Watson and Crawford not participating.

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August and September, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for

worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,588 & A,B,C,D,E; Burlington Industries, Inc., Knitted Fabric Div., Greensboro, NC, Wake Forest, NC, Denton, NC, Rocky Mount, NC, Cramerton, NC, New York, NY

TA–W–32,504; H.S. Novelty, Fultonville, NY

TA–W–32,514; Weyerhauser Containerboard Packaging Co., Buffalo, NY

TA–W–32,482; Team 95, Jamestown, TN

TA–W–32,591; Island Falls Cedar Products, Island Falls, ME

TA–W–32,576; Bethlehem Steel Corp., Including the Following Divisions; Bethlehem Structural Products Corp., Bethforge, Inc., Bethlehem Roll Corp., PB & NE Subsidiary Railroad Co., Bethlehem, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,409; Faberware, Inc., Bronx, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,619; Ontario Enterprises, Inc., Ontario, CA

TA–W–32,537; Cape Cod/Cricket Lane, Pleasant Shade, TN

TA–W–32,616; U.S. Bureau of Mines, Mineral Availability Field Office, Lakewood, CO

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,672; Oxford International Ltd, Oxford Speaker Co., Chicago, IL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–32,505; St. Marys Carbon Co., St. Marys, PA

The investigation revealed that criterion (2) and Criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,550; J & M Apparel, Inc., Finger, TN: June 21, 1995

TA–W–32,587; Goodyear Tire & Rubber Co., Green, OH

All workers totally or partially separated from employment on or after July 15, 1995 are certified.

All workers engaged in the production of air springs are denied.

TA–W–32,639; Magnetek Manufacturing, Mendenhall, MS: July 30, 1995.

TA–W–32,661; Jo-Nez Apparel, Inc., Tompkinsville, KY: August 6, 1995.

TA–W–32,627; ABS Global, Inc., Deforest, WI: July 27, 1995.

TA–W–32,598; Strick Corp., Casa Grande, AZ: July 18, 1996.

TA–W–32,556; Lodestar Industrial Contractors, Limited, Colville, WA: July 3, 1995.

TA–W–32,538; Ithaca Industries, Inc., Sylvania, GA: June 17, 1995.

TA–W–32,486; Ambrose Uniform Div. of Best Manufacturing Co., Cordele, GA: May 15, 1995

TA–W–32,531; Norco Windows, Inc., (Formerly a Div. of Trust Joist International), Hawkins, WI: June 19, 1995.

TA–W–32,454; Gartal Belt DBA General Belt, New York, NY

TA–W–32,578; Seagrave Leather Corp., East Wilton, ME: June 25, 1995.

TA–W–32,529; Magnetic Engineering, Inc., Manitou Springs, CO: June 20, 1995.

TA–W–32,544; Suburban Apparel AKA Central Fashions, Orange, NJ: June 26, 1995.

TA–W–32,545; Remington Arms Co., Inc., Ilion, NY: June 21, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August and September, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01165; Devro-Teepak, Inc., Danville, IL

NAFTA–TAA–01142; Bethlehem Steel Corp: Bethlehem Structural Products Corp., Beth Forge, Inc., Bethlehem Roll Corp., PB & NE Subsidiary Railroad Co

NAFTA–TAA–01188; Apex Mold and Engineering, Inc., Sterling Heights, MI

NAFTA–TAA–01130; American Coastal Tes Marine, Inc., Everson, WA

NAFTA–TAA–01167; Remington Arms Co., Inc., Firearms Manufacturing, Ilion, NY

NAFTA–TAA–01157; Disk maintenance d/b/a Circuit Test, Inc., Haverhill, MA

NAFTA–TAA–01159; Runnymede Mills, Inc., Tarboro, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01136; The Safety Stitch, Inc., Harrisville, WV: June 14, 1995.

NAFTA–TAA–01146; Technical Ceramics Laboratories, Inc., A Div. of Carpenter Technology Corp., Alpharetta, GA: July 5, 1995.

NAFTA–TAA–01179; V.R. Fashions, Inc., Waco, TX: August 12, 1995.

NAFTA–TAA–01177: J.E. Morgan Knitting Mills, Inc. Div. of Dawson International—PLC, Tamaqua, PA: August 8, 1995.

I hereby certify that the aforementioned determinations were issued during the month of August & September, 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 10, 1996.

Curtis K. Kooser,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–24541 Filed 9–24–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,486]

Ambrose Uniform, Division of Best Manufacturing Company, Ambrose, Georgia; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 28, 1996, applicable to all workers of Ambrose Uniform, Division of Best Manufacturing Company, Cordele, Georgia. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department's worker certification incorrectly identified the affected workers as being located in Cordele, Georgia. The worker separations took place at the subject firm's Ambrose Plant in Ambrose, Georgia. The workers were engaged in the production of lab coats and shirts. The company reports that no worker layoffs have occurred in Cordele, Georgia.

The intent of the Department's certification is to include those workers of Ambrose Uniform, Division of Best Manufacturing Company, Ambrose, Georgia, adversely affected by imports. Accordingly, the Department is amending the certification to exclude workers at the subject firms' division in Cordele, Georgia and include the workers at the Ambrose, Georgia location.

The amended notice applicable to TA–W–32,486 is hereby issued as follows:

''All workers of Ambrose Uniform, Division of Best Manufacturing Company, Ambrose, Georgia, who became totally or partially separated from employment on or after May 15, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 12th day of September 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 96–24536 Filed 9–24–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than October 7, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than October 7, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of September, 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 09/03/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,690	Bruckner Manufacturing (Co.)	Bronx, NY	07/29/96	Stainless Steel Cookware.
32,691	Smith Corona Corp. (Co.)	Cortland, NY	08/20/96	Typewriters, Word Processors.
32,692	Tuboscope Vetco (Wkrs)	Corpus Christi, TX	08/25/96	Inspection Services to Oil & Gas Co.
32,693	Decotech Innovations (Wkrs)	Marion, NC	08/20/96	Cloth and Yarn.

APPENDIX—PETITIONS INSTITUTED ON 09/03/96—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,694	Amtrol/Clayton Mark, Inc. (Wkrs)	Rogers, AR	08/14/96	Water Tanks.
32,695	U.S. Colors, Inc. (Co.)	Rocky Mount, NC	08/15/96	T-Shirts.
32,696	Hodge Apparel, Inc. (Wkrs)	Harrisville, WV	08/06/96	Blouses and Dresses.
32,697	Creative Apparel (Wkrs)	Pottstown, PA	08/09/96	Children's Wear & Medical Uniforms.
32,698	Roundwood Timber Products (Co.)	Chemult, OR	08/10/96	Posts and Poles for Lodgepole Pine.
32,699	Menominee Paper Co. (Wkrs)	Menominee, MI	08/14/96	Wax Paper.
32,700	Summit Technology, Inc (Wkrs)	Waltham, MA	08/15/96	Laser Systems—Correct Near-Sightedness.
32,701	United Cities Gas Co (Wkrs)	Independence, KS	08/16/96	Utility Firm (Gas Co).
32,702	C.J. Enterprises (Co.)	Morganton, NC	08/19/96	Ladies' & Men's Socks.
32,703	Niagara Cutter, Inc (Wkrs)	N. Tonawanda, NY	08/21/96	Industrial Milling Cutters.
32,704	Temple Inland, Inc (Wkrs)	Evadale, TX	08/02/96	Bleach Paper Board.
32,705	Union Knitting Mills (Co.)	Schuy'll Haven, PA	08/22/96	Sportswear & Sleepwear.
32,706	Anderson Profitt Apparel (Co.)	Sparta, TN	08/21/96	Ladies' Dress Pants, Jumpers, Skirts.
32,707	NordicTrack (Wkrs)	Chaska, MN	08/22/96	NordicTrack Ski Exercisers.
32,708	Murray, Inc. (Wkrs)	Lawrenceburg, TN	08/16/96	Bicycles and Lawn Mowers.

[FR Doc. 96–24540 Filed 9–24–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,066]

Grassroots USA, Inc., Corinth, Mississippi; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 31, 1996, applicable to all workers of Grassroots USA, Inc., located in Corinth, Mississippi. The notice was published in the Federal Register on June 20, 1996 (61 FR 31553).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Workers of the subject firm produced casual sportswear. New findings show that the workers of Grassroots USA, Inc., had their unemployment insurance (UI) taxes paid to Stone Mountain Leasing in Snellville, Georgia, and/or Staff Link Co. in Corinth, Mississippi. These companies provided payroll services to Grassroots. The Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Grassroots USA, Inc. who were adversely affected by imports.

The amended notice applicable to TA–W–32,066 is hereby issued as follows:

All workers of Grassroots USA, Inc., Corinth, Mississippi (including those workers whose UI wages were paid to Stone Mountain Leasing in Snellville, Georgia, and/or Staff Link Co. in Corinth, Mississippi), who became totally or partially separated from employment on or after March 7, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of September 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–24537 Filed 9–24–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00927]

Ogden Atlantic Design, Poughkeepsie, NY; Notice of Revised Determination on Reconsideration

On July 3, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice was published in the Federal Register on July 23, 1996 (61 FR 38225).

The Department's initial denial was based on the fact that criteria (3) and (4) of the group eligibility requirements of Section 250 of the Trade Act of 1974, as amended, were not met. There was no shift in production of printed circuit boards from Ogden Atlantic Design in Poughkeepsie to Mexico or Canada, and the worker separations were attributable to the corporate decision to transfer production to other domestic locations.

The petitioners presented evidence that the Department's survey of the customers of Ogden Atlantic was inadequate. Accordingly, the Department conducted a survey of those customers reducing purchases from the subject firm. Findings of the survey revealed that an important customer of the subject firm significantly increased its reliance on imports of printed circuit boards from Mexico and Canada from 1994 through July 1996.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports from Mexico and Canada of articles like or directly competitive with printed circuit boards contributed importantly to the declines in sales or production and to the total or partial separation of workers at Ogden Atlantic Design, Poughkeepsie, New York. In accordance with the provisions of the Act, I make the following certification:

All workers of Ogden Atlantic Design, Poughkeepsie, New York who became totally or partially separated from employment on or after March 18, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 16th day of September 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–24538 Filed 9–24–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00954]

Progressive Knitting Mills of Pennsylvania, Incorporated, Philadelphia, Pennsylvania; Notice of Revised Determination on Reconsideration

On June 12, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for NAFTA–Transitional Adjustment Assistance (NAFTA–TAA) applicable to all workers of Progressive Knitting Mills located in Philadelphia, Pennsylvania.

The notice was published in the Federal Register on July 3, 1996 (FR 61 34875).

By letter of July 31, 1996, the union representative, requested administrative reconsideration of the Department's findings.

The employees of the Progressive Knitting Mills in Philadelphia, Pennsylvania were engaged in the production of men's, women's and children's active wear. Sales and employment at the subject firm declined during the time period relevant to the investigation.

New findings on reconsideration show that the active wear produced by Progressive Knitting Mills is mass marketed. Therefore, the articles manufactured by the subject firm have been impacted importantly by the high penetration of imports in this market. In 1994 and 1995, the ratio of U.S. imports of general playsuits and sunsets from Mexico to domestic production was more than 200%.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles from Mexico like or directly competitive with active wear contributed importantly to the declines in sales or production and to the total or partial separation of workers of Progressive Knitting Mills of Pennsylvania, Incorporated, Philadelphia, Pennsylvania. In accordance with the provisions of the Act, I make the following certification:

All workers of Progressive Knitting Mills of Pennsylvania, Incorporated, Philadelphia, Pennsylvania who became totally or partially separated from employment on or after April 2, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–24539 Filed 9–24–96; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Supplement to California State Plan; Request for Public Comment; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Correction.

SUMMARY: In document 96–23458 beginning on page 48443 in the issue of Friday, September 13, 1996, make the following corrections:

On page 48445 in the third column, the due date for submission of public comments was mistakenly stated as October 15, 1996. The correct date is November 12, 1996.

The date for receipt of requests for an informal hearing should also read November 12, 1996, instead of October 15, 1996.

The correct date is noted on page 48443 in the second column.

Dated: September 19, 1996.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–24593 Filed 9–24–96; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

NAME AND COMMITTEE CODE: Advisory Committee for Engineering (#1170).

DATE AND TIME: October 10, 1996/9:30 am–5:00 pm; October 11, 1996/8:30 am–12 Noon.

PLACE: October 10th, Room 1235, (National Science Board Meeting Room) and October 11th, Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

TYPE OF MEETING: Open.

CONTACT PERSON: Dr. Christina Gabriel, Senior Engineering Coordinator, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA. 22230, Telephone (703) 306–1302.

MINUTES: May be obtained from the contact person listed above.

PURPOSE OF MEETING: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

AGENDA: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: September 19, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–24582 Filed 9–24–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 AND 50–353]

Philadelphia Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Philadelphia Electric Company (the licensee) to withdraw its June 5, 1995, application for proposed amendment to Facility Operating License Nos. NPF–39 and NPF–85, for the Limerick Generating Station, Units 1 and 2, respectively, located in Montgomery County, Pennsylvania.

The proposed amendment would have revised the Technical Specification (TS) Section 3/4.1.5, ''Standby Liquid Control System,'' (SLCS) to remove the minimum flow rate requirement for the SLCS pumps from TS Section 3/4.1.5.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on July 19, 1995 (60 FR 37098). However, by letter dated September 3, 1996, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 5, 1995, and the licensee's letter dated September 3, 1996, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 19th day of September 1996.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–24557 Filed 9–24–96; 8:45 am]

BILLING CODE 7590–01–P

Proposed License Renewal Regulatory Guide Workshop and Continuing Guidance Development

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The United States Nuclear Regulatory Commission (NRC) will hold a public workshop on the draft guide for

implementation of Title 10 of the *Code of Federal Regulations,* Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants'' (the license renewal rule). Information will be provided at the workshop on the NRC staff's proposed draft regulatory guide and an industry implementation guideline for the format and content of a license renewal application. Staff observations of an industry program performed to demonstrate plant-specific implementation of the industry guideline will also be provided. The staff will use the information or comments received from members of the public and the experience gained through its observation of the plant-specific demonstrations to determine whether changes are needed in the draft guide or industry guideline.

DATES: October 29, 1996, 8 a.m. to 5 p.m.

The workshop will provide the participants an opportunity to obtain further information, ask questions, make comments during the discussion, or submit written comments for NRC consideration. To ensure there are adequate copies of handouts available, persons planning to attend the workshop should call the contact designated below by October 15, 1996.

ADDRESSES: Auditorium of NRC's Two White Flint North Building, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Raj K. Anand, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC–20555, Telephone (301) 415–1146; Fax (301) 415–2279 Internet: RKA@NRC.GOV

SUPPLEMENTARY INFORMATION: The NRC published a notice of availability and request for public comments in the Federal Register on August 26, 1996 (61 FR 43792), for Draft Regulatory Guide DG–1047, ''Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses,'' as part of the implementation of the license renewal rule. This draft regulatory guide is being developed to provide a uniform format and content acceptable to the staff for structuring and presenting the information to be compiled and submitted in an application for renewal of a nuclear power plant operating license. This draft guide proposes to endorse the Nuclear Energy Institute's (NEIs) guidance document NEI 95–10, ''Industry Guideline for Implementing the Requirements of 10 CFR Part 54—The License Renewal Rule,'' Revision O, dated March 1, 1996, as an acceptable method for complying with the requirements of the license renewal rule.

The draft regulatory guide and NEI 95–10 are being developed to provide guidance regarding the contents of an application for license renewal that includes (1) required general information concerning the applicant and the plant, (2) information contained in the integrated plant assessment, (3) evaluation of time-limited aging analyses (TLAAs), (4) a supplement to the Final Safety Analysis Report (FSAR), (5) technical specification changes and their justification, and (6) a supplement to the environmental report. Specifically, guidance is provided for (1) identifying the systems, structures, and components within the scope of the license renewal rule, (2) identifying the intended functions of systems, structures, and components within the scope of the license renewal rule, (3) identifying the structures and components subject to aging management review, (4) assuring that the effects of aging are managed, (5) identifying and evaluating TLAAs, and (6) establishing the format and content of the license renewal application and FSAR supplement.

The NRC staff is observing an NEI-sponsored program that will demonstrate plant-specific implementation of NEI 95–10. This program will test the ability of participating utilities to understand and use the guidance contained in NEI 95–10. This program is scheduled to be completed in September 1996, and the staff is issuing trip reports documenting its observations of each participant's demonstration. At the conclusion of the program, the staff will compile its observations from the program into a lessons-learned report. The draft regulatory guide, NEI 95–10, and the demonstration program reports are available for inspection or copying at the NRC's Public Document Room (PDR), 2120 L Street, NW, Washington, DC (the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; telephone (202) 634–3273; fax (202) 634–3343). In addition, copies of the draft guide, NEI 95–10, and the demonstration program reports will be available at the workshop.

During development of the draft regulatory guide and NEI 95–10, the NRC staff determined that development of final guidance for certain topics was best deferred until completion of the demonstration program when additional experience with implementation of the license renewal rule and the existing NEI 95–10 guidance could be obtained. These topics include guidance on (1) the level of detail required for a license renewal application and the level of detail and content of the associated FSAR supplement, (2) the approach for using pre-approved topical reports in an application, and (3) the overall level of detail contained in NEI 95–10. Although preliminary guidance is provided in the draft guide and NEI 95–10 for these topics, the staff intends to revisit these topics when finalizing the regulatory guide. The NRC staff solicits suggestions in these areas.

The draft regulatory guide has not received complete staff review and does not represent an official NRC staff position. Public comments are being solicited on the guide as described in the Federal Register notice for the draft guide (61 FR 43792). Written comments are requested by November 29, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

The workshop is scheduled prior to the expiration of the public comment period to allow interested parties to obtain further information on the draft guide, NEI 95–10, and demonstration program for consideration when submitting written comments.

Continuing Guidance Development: Based on experience with the demonstration program to date, the NRC staff and NEI have identified a number of topics for which additional guidance for inclusion in either the regulatory guide or NEI 95–10 may be beneficial. The staff and NEI plan to continue to refine the guidance provided in the draft guide and NEI 95–10 on some of these topics during the public comment period. The process will involve public meetings and written correspondence between the staff and NEI. Meetings conducted between the staff and NEI and other outside parties will be announced and a summary placed in the PDR. Copies of documents generated as part of this effort will be available in the PDR. This activity will develop only proposed changes to the regulatory guide or NEI 95–10. Final changes to the regulatory guide or NEI 95–10 will not be made until after the public comment period expires and public comments have been considered. Significant changes in the version of the draft guide or NEI 95–10 noticed for public comment on August 26, 1996, that result from this activity will be summarized in the Federal Register notice for the final regulatory guide along with the resolution of public comments received.

Tentative Workshop Agenda

Registration
Introduction

License Renewal Rule and Guidance Development Overview
Draft Regulatory Guide and Industry Guideline Content
License Renewal Demonstration Program Overview
NRC Lessons-Learned
Industry Lessons-Learned
Comments and Questions
Summary and Conclusions

Dated at Rockville, Maryland, this 18th day of September 1996.

For the Nuclear Regulatory Commission.

Stephen T. Hoffman,

Senior Project Manager, License Renewal Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission.

[FR Doc. 96–24412 Filed 9–24–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 9–12, 1996, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Monday, November 27, 1995 (60 FR 58393).

Wednesday, October 9, 1996

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:00 a.m.: Introduction (Open)—The ACRS Chairman will introduce the ACRS Members to the Canadian Advisory Committee on Nuclear Safety (ACNS) and the ACNS Chairman will introduce the ACNS Members to the ACRS. Both Committees will discuss ACRS and ACNS missions, regulatory environments, process/products, interactions, and independence.

9:00 a.m.–11:30 a.m.: Risk-Informed and Performance-Based Regulations (Open)—The ACRS and ACNS will discuss prescriptive vs performance-based regulation, PRA methods and completeness, and defense-in-depth.

1:00 p.m.–2:15 p.m.: Plant Aging (Open)—The ACRS and ACNS will discuss issues associated with plant aging.

2:15 p.m.–3:00 p.m.: Operator Training/Simulator Use (Open)—The ACRS and ACNS will discuss the training of nuclear power plant operators and the use of simulators for training operators and other plant personnel.

3:15 p.m.–4:15 p.m.: Digital Instrumentation and Control Systems (Open)—The ACRS and ACNS will discuss the proposed Standard Review Plan Sections, Branch Technical Positions, and Regulatory Guides associated with digital instrumentation and control systems. They will also discuss the issues identified by the National Academy of Sciences/National Research Council (NAS/NRC) in the Phase 1 study, status of the Phase 2 study, and the ACNS views on the use of digital instrumentation and control systems.

4:15 p.m.–5:00 p.m.: Miscellaneous Matters (Open)—The ACRS and ACNS will discuss miscellaneous issues, including ALARA, cost-benefit considerations, safety culture, etc.

Thursday, October 10, 1996

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:15 a.m.: Status of NRC Strategic Assessment and Rebaselining Effort (Open)—The Committee will hear a presentation by and hold discussions with the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research regarding the status of the NRC strategic assessment and rebaselining effort.

10:30 a.m.–12:00 Noon: Digital Instrumentation and Control Systems (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Standard Review Plan Sections and Branch Technical Positions associated with the digital instrumentation and control systems.

Representatives of the nuclear industry will participate, as appropriate.

1:00 p.m.–2:30 p.m.: Control Room Back-Panel Fire at Palo Verde Unit 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the findings and recommendations resulting from the investigation of the April 4, 1996 event that involved two related fires in a back panel of the main control room of Palo Verde Unit 2.

Representatives of the licensee will participate, as appropriate.

2:30 p.m.–3:00 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to ACRS.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

3:00 p.m.–3:30 p.m.: Future ACRS Activities (Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

3:45 p.m.–4:00 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the EDO response to the August 15, 1996 ACRS report on SECY–96–128, ''Policy and Key Technical Issues pertaining to the Westinghouse AP600 Standardized Passive Reactor Design.''

4:00 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as a proposed ACRS report on the suitability of the NRC SCDAP/RELAP5 Code to predict temperatures and flows in steam generators during severe accidents.

Friday, October 11, 1996

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:30 a.m.: Activities Associated with the NRC Thermal Hydraulic Codes (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff activities associated with the NRC thermal hydraulic codes.

Representatives of the nuclear industry will participate, as appropriate.

10:45 a.m.–11:00 a.m.: Report by the Human Factors Subcommittee Chairman (Open)—The Committee will hear a report by the Chairman of the Human Factors Subcommittee regarding matters discussed during the September 20, 1996 Subcommittee meeting.

11:00 a.m.–12:00 Noon: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as the report on the suitability of the NRC SCDAP/RELAP5 Code to predict temperatures and flows in steam generators during severe accidents.

2:30 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of the proposed ACRS reports on matters considered during this meeting as well as the other report noted above.

Saturday, October 12, 1996

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports on matters considered during this meeting.

11:45 a.m.–1:30 p.m.: Strategic Planning (Open)—The Committee will continue its discussion of items of significant importance to NRC, including rebaselining of the Committee activities for FY 97.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 27, 1995 (60 FR 49925). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements

can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. edt.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: September 19, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–24558 Filed 9–24–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 8, 1996, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, October 8, 1996—1:30 p.m. Until 3:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 18, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–24559 Filed 9–24–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 23, 30, October 7, and 14, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 23

There are no meetings scheduled for the Week of September 23.

Week of September 30—Tentative

Thursday, October 3

1:00 p.m.—Affirmation Session (Public Meeting) (if needed).

Week of October 7—Tentative

Monday, October 7

2:00 p.m.—Briefing on Site Decommissioning Management Plan (SDMP) (Public Meeting) (Contact: Mike Webber, 301–415–2797).

Wednesday, October 9

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of October 14—Tentative.

Tuesday, October 15

1:00 p.m.—Briefing by Executive Branch (Closed—Ex. 1).

Wednesday, October 16

9:00 a.m.—Briefing on Containment Degradation (Public Meeting).
2:00 p.m.—Briefing PRA Implementation Plan (Public Meeting).
3:30 p.m.—Affirmation Session (Public Meeting) (if needed).

Friday, October 18

9:00 a.m.—Briefing on Integrated Safety Assessment Team Inspection (ISAT) at Maine Yankee (Public Meeting).

The Schedule for Commission Meetings is Subject to Change on Short Notice. To Verify the Status of Meeting Call (Recording)—(301) 415–1292. Contact Person for More Information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: September 20, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–24693 Filed 9–23–96; 11:09 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189

of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 30, 1996, through September 13, 1996. The last biweekly notice was published on September 11, 1996.

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 25, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: August 2, 1996

Description of amendment request: The proposed amendment would eliminate from the licenses the requirement to conduct corrosion testing for the laser welded steam generator sleeves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change only involves deleting laboratory testing requirements designed to demonstrate service life of laser welded sleeved tubes in the presence of a crevice. Current inspection requirements ensure that premature degradation is identified and that tubes containing degraded sleeve joints are plugged. Operational primary-to-secondary leakage limits ensure that appropriate action is taken if sleeve degradation results in leakage. These actions will ensure that offsite dose will be maintained within a small percentage of 10 CFR 100 limits. Failure of a sleeve joint is bounded by the Steam Generator Tube Rupture event evaluated in the [Updated Final Safety Analysis Report] UFSAR. Therefore, the laboratory testing to determine service life of sleeved tube joints in the presence of a crevice does not provide any further useful data. The change does not result in the installation of any new equipment, and no existing equipment is modified.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change only addresses deleting the laboratory testing requirements designed to demonstrate service life of sleeved tubes in the presence of a crevice. Sleeved tubes will continue to be inspected and plugged in accordance with existing requirements which are sufficient to ensure detection and repair of degraded tubes. Premature degradation of tubes is addressed through primary-to-secondary leakage monitoring and leakage limits. No new equipment is being installed and no existing equipment is being modified by this proposed change. Also, no new system configurations will be introduced as a result of this proposed change. Therefore, no new or different failure modes are being introduced by deleting the laboratory testing.

Thus, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This proposed change only involves deleting laboratory testing requirements designed to demonstrate service life of sleeved tubes in the presence of a crevice. Sleeve integrity will be monitored during the operating cycle through the current primary-to-secondary leakage monitoring program. In the event of premature degradation of a sleeve joint that results in tube leakage, plant shutdown will occur as required by Technical Specifications and administrative requirements in accordance with approved plant procedures. Sleeved tubes will be monitored for degradation in accordance with the existing inservice inspection requirements which monitors a minimum 20 percent random sleeve sample size. Any tubes with defective sleeve joints will be plugged as required by Technical Specifications. Service life of sleeved tubes in the presence of a crevice, as predicted by laboratory testing, does not affect the margin of safety of the plant. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: July 15, 1996

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) and associated Bases to relocate the fire protection program elements from the TS to the Fire Protection Program. The affected TS sections are 3/4.3.7.9, ''Fire Detection Instrumentation;'' 3/4.7.5, ''Fire Suppression Systems;'' 3/4.7.6, ''Fire Rated Assemblies;'' and 6.1.C.4,

''Fire Brigade Staffing.'' In addition, the amendments revise the Operating License to replace existing fire protection license conditions with the NRC's standard fire protection license condition. These changes are made in accordance with the guidance provided in Generic Letter (GL) 86-10, ''Implementation of Fire Protection Requirements,'' and GL 88-12, ''Removal of Fire Protection Requirements from Technical Specifications.'' Also, the May 19, 1995, proposed revision to remove the fire protection requirements from the TS (60 FR 35067) is withdrawn.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

This amendment request does not involve any actual changes to the fire protection systems at the station. It involves an administrative change which relocates the control of the Fire Protection Program from each unit's operating license and technical specifications to the station Fire Protection Program, as suggested in Generic Letters 86-10 and 88-12. Therefore, the relocation of these controls does not affect the assumptions for any of the accident analysis contained in Chapter 15 of the [Updated Final Safety Analysis Report] UFSAR.

The Fire Protection Technical Specifications which are to be relocated to the Fire Protection Program will be controlled by the proposed fire protection license condition and 10CFR 50.59. These controls ensure that the requested changes maintain the same level of control for the Fire Protection Program as that which currently exists in the Technical Specifications. Therefore, this change is administrative in nature and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This amendment request does not involve any physical changes to the fire protection systems or reduce the level of control of the Fire Protection Program. It therefore does not create the possibility of a new or different type of accident than any previously described in the UFSAR.

3) Involve a significant reduction in the margin of safety because:

The same level of control which is currently applied to the Fire Protection Program by the limiting conditions for operation and the surveillance requirements of the technical specifications will be included in the controls applied by the unit licenses and the Fire Protection Program. Therefore, the margin of safety as defined in the technical specification bases will not be reduced by this proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: July 26, 1996, and supplemented on September 3, 1996

Description of amendment request: The proposed amendments would allow licensee control of the reactor coolant system (RCS) pressure and temperature (P/T) limits for heatup, cooldown, low temperature operation and hydrostatic testing. They would also revise the reactor vessel material surveillance program specimen withdrawal schedule such that the Unit 2 removal of capsule X is delayed until 19 Effective Full Power Years (EFPY). This change affects the schedule for withdrawing surveillance capsules from the reactor vessel for testing to measure the impact of neutron irradiation of the vessel material and is required by Section III.B.3 of 10 CFR Part 50, Appendix H, ''Reactor Vessel Material Surveillance Program Requirements.'' The schedule must be approved by the Nuclear Regulator Commission (NRC) before implementation.

Based on input from the Babcock and Wilcox Owners Group Reactor Vessel Working Group, the data from Zion, Unit 2, capsule X would be more useful in the overall Master Integrated Reactor Vessel Surveillance Program (MIRVP) context if irradiated to the ASTM E185-82 maximum of twice the peak End Of Life (EOL) vessel fluence, because data at higher fluences is needed to characterize irradiation behavior at the higher EOL fluences characteristic of other non-Commonwealth Edison MIRVP vessels. For this reason, the licensee is proposing withdrawing and testing Zion, Unit 2, capsule X at 19 EFPY, which is currently estimated to occur at refueling outage Z2R18, in the year 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the 10 CFR 50, Appendix H reactor vessel material specimen withdrawal schedule. Neither the specimens, nor the process of withdrawal of the specimens, are considered as initiators for any previously evaluated accident. Further, data at all fluence levels of current interest based on ASTM E185-82 has already been obtained from seven Zion Unit 1 and 2 capsules which have been tested, and the existing evaluations show the reactor vessel fracture toughness properties to be as expected, and providing the required safety margin. Extending the time for withdrawal of the specimen does not adversely affect the pressure and temperature limit curves for the reactor vessel. Regulatory Guide 1.99, Rev. 2, was used to prepare the conservative pressure and temperature limit curves which continue to be requirements.

Additionally, Zion Station participates in the B&W Owners Group Reactor Vessel Working Group designed to significantly increase the amount of PWR surveillance data. Under this Working Group, Zion Station data contributes to the overall understanding of reactor vessel material irradiation behavior at high EOL fluences, and obtains the benefit of data from other plants. This program complements the Zion Station program so that postponement of the specimen withdrawal will have minimal impact on the understanding of the irradiation effects on the Zion Station reactor vessel. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to the specimen withdrawal schedule does not change the system operation or design, and therefore, does not change the response of any required structures, systems or components in the mitigation of any evaluated accident. As such, this change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change relocates the RCS P/T, LTOP [low-temperature overpressure protection] limitations, and supporting information from the Technical Specifications to Licensee control, specifically a Pressure Temperature Limits Report (PTLR). Compliance with these limitations will continue to be required by the Technical Specifications, however the limitations themselves will be relocated to a Licensee controlled document. Changes to these limitations will be controlled by Section 5.6.6 of the Technical Specifications. Changes to the RCS P/T limits can only be made in accordance with the approved methodologies listed in the Technical Specifications which will, in combination with the limitations that continue to be

imposed by the Technical Specifications, continue to assure the function of the reactor vessel as a pressure boundary. Revisions to the LTOP limits can only be made in accordance with the approved methodologies listed in the Technical Specifications, with any resulting setpoint changes controlled through a process which utilizes 10 CFR 50.59. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different equipment will be installed). The proposed revision to the specimen withdrawal schedule does not change the system operation or design, and therefore, does not introduce any new failure mechanisms. The proposed specimen withdrawal schedule continues to provide the required data for subsequent reactor vessel evaluations, and previous data has confirmed the confidence in the integrity of the reactor vessel well beyond the completion of the evaluations following the proposed withdrawal. Therefore, this revision to the withdrawal schedule does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not necessitate a physical alteration of the plant (no new or different equipment will be installed). The Technical Specifications will continue to retain requirements to maintain the RCS within acceptable operational limitations and to assure operability of the LTOP system. As such, the Technical Specifications will continue to require compliance with these limitations. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change to the specimen withdrawal schedule will not result in a significant reduction in a margin of safety because it has no impact on any safety analysis assumptions. Additionally, data at all fluence levels of current interest based on ASTM E185-82 has already been obtained with the seven Zion Unit 1 and 2 capsules which have been tested, and the existing evaluations show the reactor vessel fracture toughness properties to be as expected, and providing the required safety margin. The current pressure and temperature limits are conservative and also provide sufficient margin to ensure the integrity of the reactor vessel. The proposed change to the withdrawal schedule does not adversely impact these curves. Therefore, this change does not involve a significant reduction in a margin of safety.

The proposed change will not result in a significant reduction in a margin of safety because it has no impact on any safety analysis assumptions. Any future changes to the RCS P/T, LTOP limits, or supporting information must be performed in accordance with approved NRC methodologies, and compliance with the limitations relocated to the PTLR will continue to be required by the Technical Specifications. Additionally, any revision to the LTOP limits which result in setpoint changes will be controlled through a process which utilizes 10 CFR 50.59. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: September 5, 1996 (NRC-96-0075)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) sections 2.1.2 and 3.4.1.1 to incorporate cycle-specific safety limit minimum critical power ratios (SLMCPRs) for the core that will be loaded during the upcoming refueling outage expected to commence in November 1996.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised SLMCPRs for Fermi 2 for incorporation into the TS, and its use to determine cycle-specific thermal limits, have been performed using NRC-approved methods. Additionally, interim implementing procedures, which incorporate cycle-specific parameters, have been used which result in a more restrictive value for the SLMCPR. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient. The basis of the MCPR Safety Limit is to ensure that no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change results from analysis of the Cycle 6 core reload using the same fuel types as previous cycles. These changes do not involve any new method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new SLMCPRs are calculated using NRC-approved methods which are in accordance with the current fuel design and licensing criteria. Additionally, interim implementing procedures, which incorporate cycle-specific parameters, have been used. The MCPR Safety Limit remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: John Hannon

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 31, 1996, as supplemented by letter dated September 5, 1996. These letters supersede the application submitted in letter dated May 9, 1996, which was noticed in the Federal Register on June 5, 1996 (61 FR 28614).

Description of amendment request: The amendment request would (1) increase the safety limit minimum critical power ratio (MCPR) for two loop operation and single loop operation to 1.12 and 1.14, respectively, and (2) add a General Electric topical report to the list of documents describing the analytical methods used to determine the core operating limits. The proposed changes are to Section 2.1.1, Reactor

Core Safety Limits, and Section 5.6.5, Core Operating Limits Report (COLR), respectively, of the Technical Specifications (TSs). This amendment would go into effect in Operating Cycle 9, at the end of the upcoming Refueling Outage 8, and the plant will have a mixed core of Siemens Power Corporation (SPS) 9x9-5 and General Electric (GE) GE11 reload fuel. The licensee also proposed changes to the Bases of the TSs associated with the above proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The Minimum Critical Power Ratio (MCPR) safety limit is defined in the Bases to Technical Specification 2.1.1 as that limit which ''ensures that during normal operation and during Anticipated Operational Occurrences (AOOs), at least 99.9% of the fuel rods in the core do not experience transition boiling.'' The MCPR safety limit is re-evaluated for each reload and, for GGNS [Operating] Cycle 9, the analyses have concluded that a two-loop MCPR safety limit of 1.12 based on the application of the generic GE MCPR methodology is necessary to ensure that this acceptance criterion is satisfied. For single-loop operation, a MCPR safety limit of 1.14 based on the generic GE MCPR methodology was determined to be necessary. Core MCPR operating limits are developed to support the Technical Specification 3.2 requirements and ensure these safety limits are maintained in the event of the worst-case transient. Since the MCPR safety limit will be maintained at all times, operation under the proposed changes will ensure at least 99.9% of the fuel rods in the core do not experience transition boiling. Therefore, The Minimum Critical Power Ratio (MCPR) safety limit change does not affect the probability or consequences of an accident.

The implementation of GE's GESTAR-II approved methodology has no effect on the probability or consequences of any accidents previously evaluated. One exception to GESTAR is that the mis-oriented and mis-located bundle events will continue to be analyzed as accidents subject to the acceptance criteria in the current licensing basis. The design of the GE11 fuel bundles is such that the bundles are not likely to be mis-oriented or mis-located and the normal administrative controls will be in effect for assuring proper orientation and location. Therefore, the probability of a fuel loading error is not increased. This analysis ensures that postulated dose releases will not exceed a small fraction (10 percent) of 10 CFR 100 limits.

Therefore, the consequences of accidents previously evaluated are unchanged.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The GE11 fuel to be used in [Operating] Cycle 9 is of a design compatible with fuel present in the core and used in the previous cycle. Therefore, the GE11 fuel will not create the possibility of a new or different kind of accident. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications. They introduce revised MCPR safety limits that have been proved to be acceptable for Cycle 9 operation. Compliance with the applicable criterion for incipient boiling transition continues to be ensured. The proposed MCPR safety limits do not result in the creation of any new precursors to an accident.

Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

The MCPR safety limits have been evaluated to ensure that during normal operation and during AOOs [abnormal operating occurrences], at least 99.9% of the fuel rods in the core do not experience transition boiling. Therefore, the implementation of the proposed changes in the MCPR safety limit ensure there is no reduction in the margin of safety.

As with the current SPC methodology, GGNS will implement only the NRC-approved revisions to GE's GESTAR methodology. This GE methodology is similar to those SPC reports currently listed in TS 5.6.5 and it will be applied in a similar, conservative fashion. One exception to GESTAR is that the mis-oriented and mis-located bundle events will continue to be analyzed as accidents subject to the acceptance criteria in the current licensing basis. This analysis ensures that postulated dose releases will not exceed a small fraction (10 percent) of 10CFR100 [10 CFR Part 100] limits. On this basis, the implementation of this GE methodology does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Gulf States Entergy, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 1, 1996

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to incorporate requirements for limiting the time that the hydrogen mixing isolation valves on the drywell are open. The requirements were contained in the old TSs and with the conversion to the Improved Standard Technical Specifications, the requirements were inadvertently changed. The proposed action is to restore requirements to meet the licensing basis for the River Bend Station. The proposed amendment would also change the time from 7 days to 31 days to determine the cumulative time the valves are open.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes in this submittal put the requirements that were in the original Technical Specifications for the Hydrogen Mixing System back into the current Technical Specifications. The changes reenstate into the Technical Specifications limitations that were previously agreed to between River Bend and the Nuclear Regulatory Commission in the FSAR Safety Evaluation Report for the Hydrogen Mixing System.

The River Bend SER states in Supplement 2, Section 6.2.4, ''Since the applicant has not demonstrated that these valves are capable of closing under accident conditions in the drywell, certain restrictions apply. Technical Specification 3.6.6.2 specifies that in Operating Modes 1 and 2, the total number of hours used should not exceed 5 hours/365 days and in Operating Mode 3 the number of hours should be limited to 90 hours/365 days.'' To date, the hydrogen mixing isolation valves have not been fully demonstrated to be capable of closing under accident conditions in the drywell. The old Standard Technical Specifications (Attachment 2) used at River Bend reflected this condition. When conversion to ITS was made, these requirements were dropped but should not have been. In addition, the requirement to operate the hydrogen mixing system every 92 days during Modes 1, 2, and 3 was added without consideration for the requirements in the River Bend Safety Evaluation Report.

Consequently, for these proposed change, since the requirements already exist and are being reenstated into the Technical Specifications, this change is administrative in nature. The requirements have remained in place through the SER, but were

inadvertently removed from the Technical Specifications. This change places the requirements from the SER back into the Technical Specifications.

In addition, changing the requirement from the old Technical Specifications for determining the cumulative time that the hydrogen mixing inlet and outlet valves are open from every 7 days to every 31 days is again administrative in nature, since this only changes the frequency with which a given requirement is tracked administratively. It does not change the actual requirement in any way.

Consequently, since both of these changes are administrative in nature and only incorporate requirements into the Technical Specifications that already existed in the RBS FSAR Safety Evaluation Report, the changes proposed in this amendment request do not change the probability or consequences of an accident previously evaluated.

This proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to the initiation of any accidents.

The changes proposed in this amendment request are administrative in nature and merely add requirements back into the Technical Specifications that were inadvertently deleted during the conversion to ITS. Because of the administrative nature of the proposed changes, it is not possible to create a new or different kind of accident from any accident previously evaluated.

The proposed changes in this amendment request reenstate requirements into the Technical specifications that are contained present in the RBS FSAR Safety Evaluation Report. These requirements were inadvertently deleted during the conversion to ITS.

Because of the administrative nature of these Technical Specification changes, there is no change to the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 15, 1996.

Description of amendment request: The proposed amendments would remove a requirement for performance of a surveillance incorporating a high toxic gas test signal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Analyses were performed to evaluated postulated releases of potentially hazardous chemicals for their impact on Control Room habitability. The latest revision of these analyses shows that none of the potentially hazardous chemicals utilized onsite or in the surrounding 5-mile radius around the South Texas Project pose a credible hazard to the Control Room. Consequently, there is no need to ensure that the Control Room Makeup and Cleanup Filtration System can automatically switch into a recirculation mode of operation by isolating the normal supply and exhaust flow in response to a High Toxic Gas test signal. Therefore, elimination of the unnecessary surveillance has no effect on the probability of an accident or its consequences.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Toxic Gas Monitoring System was provided to protect against hazardous toxic gas releases only. Verifying automatic switch into the recirculation mode of operation is no longer necessary since the Toxic Gas Analyzers have been removed. This change does not affect other tests for verification of automatic switching into the recirculation mode of operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Analyses have shown that none of the chemicals onsite and within a 5-mile radius of the South Texas Project pose a credible hazard to the facility. Automatic switching of the Control Room Makeup and Cleanup Filtration System will continue to be verified using test signals from other sources.

Based upon this evaluation, the South Texas Project has concluded that these changes do not involve any significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036-5869

NRC Project Director: William D. Beckner

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: August 15, 1996

Description of amendment request: A Federal Register Notice on May 22, 1996 (61 FR 25707), stated that revisions were being proposed to Clinton Power Station Technical Specification (TS) 3.3.6.2, ''Secondary Containment Isolation Instrumentation;'' TS 3.3.7.1, ''Control Room Ventilation System Instrumentation;'' TS 3.6.1.2, ''Primary Containment Air Locks;'' TS 3.6.1.3, ''Primary Containment Isolation Valves;'' TS 3.6.4.1, ''Secondary Containment;'' TS 3.6.4.2, ''Secondary Containment Isolation Dampers;'' TS 3.6.4.3, ''Standby Gas Treatment;'' TS 3.7.3, ''Control Room Ventilation;'' and TS 3.7.4, ''Control Room AC System.'' By letter dated August 15, 1996, the licensee revised their proposal to consolidate the above changes under a newly proposed Special Operations LCO (i.e., LCO 3.10.10, ''Single Control Rod Withdrawal - Refueling''). Therefore, the Description of Amendment Request to the TSs has changed as described herein. The Basis for No Significant Hazards Consideration has not changed and is repeated below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes eliminate CORE ALTERATIONS as an applicable condition requiring operability of the primary and secondary containment and control room ventilation system. As stated in the BASES for the associated Technical Specifications, operability of these systems is primarily required for mitigation of the design basis accident - fuel handling accident (DBA-FHA) and design basis accident - loss of coolant accident (DBA-LOCA). The performance of CORE ALTERATIONS alone is neither a

precursor to, nor a condition during which these DBAs are postulated to occur. The proposed changes only delete CORE ALTERATIONS as an applicable condition for the affected Technical Specifications. All other applicable MODES or specified conditions, including operations with the potential for draining the reactor vessels (OPDRVs) and the movement of irradiated fuel assemblies within the primary or secondary containment, remain unchanged. Further, the limitations placed on the handling of light loads are also unchanged. The Technical Specifications (and the separate requirements imposed on the handling of light loads) will thus continue to require that systems or functions designed to mitigate design-basis/previously evaluated accidents are OPERABLE during the relevant operating MODES or conditions. On the basis of the above, it is concluded that the requested amendment will not increase the probability or consequences of any accident previously evaluated.

2. The proposed changes do not involve any modification to the plant design or to the operation of plant systems (except to determine when certain analyzed accident-mitigating systems or features are required to be OPERABLE). The failure modes considered for the proposed changes are the same as those previously considered, therefore, it can be concluded that no new failure modes will be created. On this basis, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The changes being made to eliminate CORE ALTERATIONS as an applicable condition for which certain LCOs must be met, do not eliminate the requirements for operability of those systems or features assumed to mitigate design-basis or analyzed accidents during the applicable MODES when such systems or features are assumed to be available for performing their mitigating function. The safety margins assumed or established by the accident analyses for those design-basis events (as described in the accident analyses of the Clinton Power Station Updated Final Safety Analysis Report) therefore remain unchanged. Further, the proposed changes do not impact the controls imposed on the handling of light loads (including unirradiated fuel assemblies) for ensuring that such activities cannot result in an event that yields consequences more severe than those calculated for the DBA-FHA. With respect to reactivity concerns during refueling operations (MODE 5), all systems or features required to be OPERABLE for precluding inadvertent criticality and monitoring reactivity changes will continue to be required OPERABLE as per the current Technical Specification requirements. The deletion of CORE ALTERATIONS as an applicable condition only applies to the noted systems which do not contribute to precluding reactivity events. Based on the above, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, Illinois 62525

NRC Project Director: Gail H. Marcus

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: August 12, 1996

Description of amendment request: The proposed amendment would add an additional circumstance to Exception 2 of Technical Specification (TS) 3.6, Emergency Core Cooling and Containment Spray Systems, during which operation of a service water/component cooling pump subsystem is permitted at reduced flow to flush the service water header or inlet strainer. The Bases for this TS would be augmented to support the additional circumstance of reduced service water flow.

The proposed amendment would also modify the valve surveillance requirements of TS 4.6.A.1.b, Periodic Testing of ECCS Valves, to provide an exception to surveillance requirements for those locked valves that are inaccessible during power operations or located in a locked high radiation area. The Bases for this TS would be augmented to support the change in surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's analysis is presented below.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Invocation of the proposed addition to Exception 2 to TS 3.6 would not alter any associated Remedial Action completion time, nor those of TS 3.0.A, Nonconformance with a Limiting Condition for Operation. The evolutions for which this amendment is intended (flushing a heat exchanger inlet strainer or cleaning a service water header that has become fouled)are administratively controlled by procedures that require review and approval by the Plant Operation Review Committee.

The proposed change to TS 4.6.A.1.b would revise the surveillance requirements for a very limited number of locked manual valves in the emergency core cooling system (ECCS). The purpose of the surveillance requirements is unchanged and is intended to verify that locked valves remain in their correct position. The position of the valves is not changed and the revised surveillance requirements will continue to demonstrate ECCS valve operability.

Thus, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed addition to Exception 2 to TS 3.6 recognizes that service water cleaning and flushing are operations that are required to maintain heat transfer capability and equipment reliability. The proposed amendment does not affect the design of the plant and do not permit operation of the plant outside the currently allowed modes of operation.

The proposed change to TS 4.6.A.1.b maintains verification of ECCS valve operability, while requiring no changes in system configuration to perform surveillance testing. System functional performance is not adversely affected.

Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to TS 3.6 does not significantly alter the availability or condition of applicable equipment and therefore does not alter the accident analyses or the conclusions associated with that equipment. The proposed change permits service water flow to be reduced below that required for operation of the ECCS in the recirculation mode, for a short time. The time during which flow is reduced and both the mussel control and flushing evolutions are administratively controlled by procedures reviewed and approved by the Plant Operation Review Committee.

The proposed change to TS 4.6.A.1.b maintains verification of valve operability. Valve position surveillances will continue to be conducted in accordance with plant Technical Specifications to ensure valve operational readiness.

Thus, there is no significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to

determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011 NRC Deputy Director: John A. Zwolinski

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: June 7, 1996

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 by revising Technical Specifications (TS) 3/4.9.14.1, ''Spent Fuel Assembly Storage - Spent Fuel Pool Region 2,'' and 3/4.9.14.3, ''Spent Fuel Assembly Storage - Spent Fuel Pool Region 1,'' to allow storage of fuel assemblies in a checkerboard pattern in region 2 of the spent fuel pool.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Analysis indicates that allowing fuel storage in a checkerboard

pattern with empty storage cells in region 2 of the spent fuel

pool will not result in an inadvertent criticality event. The k_{eff} will continue to remain below 0.95 as required to meet the acceptance criteria in the NRC Standard Review Plan, Section 9.1.1.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to allow fuel storage in a checkerboard pattern with no minimum burnup requirements in region 2 of the spent fuel pool would designate locations where a fuel assembly could be incorrectly placed. However, the incorrect placement of a fuel assembly has been analyzed and would not cause an inadvertent criticality or any other accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The NRC Standard Review Plan, Section 9.1.1, acceptance criterion of a k_{eff} of 0.95 provides the margin to criticality. An analysis was performed that concluded that the proposed change to allow fuel storage in spent fuel pool region 2 in a checkerboard pattern meets the acceptance criterion.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: William H. Bateman

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: June 6, 1996 (TS 372)

Description of amendment request: The proposed amendment revises Section 6 of the Browns Ferry Nuclear Plant Units 1, 2, and 3 technical specifications. Administrative controls associated with quality assurance are relocated to the licensee's Nuclear Quality Assurance Plan, consistent with Administrative Letter 95-06, and provides revisions that make Section 6 more consistent with the improved Standard Technical Specifications. Additional administrative changes are included to ensure consistent terminology within the specifications, and to update obsolete items such as titles and addresses. The proposed amendment also includes minor editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change to revise items 1 through 28 above (Section I, Description of the Proposed Change) was evaluated and the proposed TS changes were determined to be administrative in nature. The changes [items 2 through 9, 11, 17 through 21, 23, 26, and 27] involve administrative title changes of TVA management positions, the updating of an NRC mailing address and an NRC regional office title. In addition, certain sections [items 1, 10, 12, 13, 24, and 25] are being relocated into other licensee documents for which those provisions are adequately controlled by regulatory requirements. [Items 14, 15, 16, 22, and 28 are editorial changes.] These changes do not affect any of the design basis accidents. They do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change to revise items 1 through 28 above (Section I, Description of the Proposed Change) was evaluated and the proposed TS changes were determined to be administrative in nature. The changes involve administrative title changes of TVA management positions, the updating of an NRC mailing address and an NRC regional office title. In addition, certain sections are being relocated into other licensee documents for which those provisions are adequately controlled by regulatory requirements. These changes do not affect any of the design basis accidents. No modifications to any plant equipment are involved. There are no effects on system interactions made by these changes. They do not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed TS change to revise items 1 through 28 above (Section I, Description of the Proposed Change) was evaluated and the proposed TS changes were determined to be administrative in nature. The changes involve administrative title changes of TVA management positions, the updating of an NRC mailing address and an NRC regional office title. In addition, certain sections are being relocated into other licensee documents for which those provisions are adequately controlled by regulatory requirements. The margin of safety as reported in the basis for the TSs is not reduced. The proposed change is administrative and does not impact any technical information contained in the bases of the TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: August 30, 1996 (TS 380)

Description of amendment request: The proposed amendment deletes License Condition 2.C.(3) regarding thermal water quality standards from the licenses for the Browns Ferry Nuclear Plant Units 1, 2, and 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed License Condition change is an adminstrative change and has no relationship to plant safety analyses. Therefore, this change does not increase the frequency of the precursors to design basis events or operational transients analyzed in the BFN [Browns Ferry Nuclear Plant] Final Safety Analysis Report. Likewise, the proposed changes will not increase the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed License Condition change is an administrative change and has no relationship to plant safety analyses. Thus, the change does not create any type of new accident sequences. Likewise, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed License Condition change is an administrative change and has no relationship to plant safety analyses. Therefore, the proposed amendment does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: August 16, 1996

Description of amendment request: This notice relates to your submittal to remove the uncertainty term from the specified distance and remove the footnote which specifies the time frame it is applicable.

Date of publication of individual notice in Federal Register: September 11, 1996 (61 FR 47968)

Expiration date of individual notice: October 11, 1996

Local Public Document Room location: location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: September 3, 1996

Description of amendment request: This notice relates to your submittal to modify Technical Specification Section 4.3.1.B.4.A.10.a which provides the acceptance criteria for steam generator tube repairs by adding a footnote which references the cleanliness and nondestructive examination requirements as described in CEN-629-P, Revision 00, ''Repair of Westinghouse Series 44 and 51 Steam Generator Tubes Using Leak Tight Sleeves.'' Date of publication of individual notice in Federal Register: September 11, 1996 (61 FR 47966)

Expiration date of individual notice: October 11, 1996

Local Public Document Room location: location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: March 25, 1996, as supplemented by letter dated August 23, 1996

Brief description of amendment request: The proposed amendment would revise the safety limit minimum critical power ratios (SLMCPRs) to support use of GE-13 fuel at PBAPS, Units 2 and 3. Date of publication of individual notice in Federal Register: August 30, 1996 (61 FR 45997)

Expiration date of individual notice: September 30, 1996

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: May 28, 1996, as supplemented by letter dated July 25, 1996

Brief description of amendment request: The proposed amendment would revise the Minimum Critical Power Ratio safety limit values, adding two references to reflect the use of the ANF-B Critical Power Ratio Correlation and to reflect the use of the ABB Combustion Engineering licensing methodology, with a modification to the associated Bases.

Date of publication of individual notice in Federal Register: September 9, 1996 (61 FR 47529)

Expiration date of individual notice: October 9, 1996

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: January 30, 1996, as supplemented May 20, 1996

Brief description of amendment: This amendment revises the Technical Specifications (TS) to: (1) add TS 4.6.1.5 to provide criteria for 24-hour full-load testing of the emergency diesel generators (EDGs) to be performed during each refueling outage; (2) revise TS 4.6.1.2 to allow testing of the EDG protective bypasses listed in TS 3.7.1.d to be done independent of the safety injection or loss of offsite power testing; and (3) revise TS 4.6.1.3 to include the EDG protective bypass inspection.

Date of issuance: September 11, 1996

Effective date: September 11, 1996

Amendment No. 174

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 28, 1996 (61 FR 7546) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1996. The May 20, 1996, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. No significant hazards consideration comments received: No

Local Public Document Room location: location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: December 10, 1995, as supplemented August 1, 1996, and September 4, 1996.

Brief description of amendment: This amendment revises Technical Specification (TS) Section 3.5.1 and Tables 3.5-2, 3, and 4 concerning the reactor trip system, engineering safety feature actuation system, and isolation function.

Date of issuance: September 12, 1996Effective date: September 12, 1996

Amendment No. 175

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 14, 1996 (61 FR 5812). The August 1, 1996, and September 4, 1996, submittals provided administrative changes to the TS pages that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of amendment request: September 30, 1994, as supplemented September 18, 1995, January 19, March 15, May 16, and August 27, 1996

Description of amendment: The amendment revises the Technical Specifications to reflect the new setpoints, operational parameters, and approved analysis methodologies associated with replacement of the Unit 1 steam generators. The amendment also deletes references to steam generator tube repair methods, which will no longer be applicable after the replacement, and clarifies initial surveillances.

Date of issuance: August 29, 1996

Effective date: As of the date of issuance, to be implemented within 30 days

Amendment No.: 151

Facility Operating License No. NPF-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 10, 1996 (61 FR 15986) The May 16 and August 27, 1996, letters provided clarifying information that did not change the scope of the September 30, 1994, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 29, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: July 17, 1996, as supplemented August 28, 1996 (TSCR 242, Rev. 2). This application supersedes applications dated February 23 (TSCR 242) and June 19, 1996 (TSCR 242, Rev. 1).

Brief description of amendment: The amendment changes the Technical Specifications (TS) to allow the implementation of 10 CFR Part 50, Appendix J, Option B.

Date of Issuance: September 3, 1996

Effective date: September 3, 1996, to be implemented within 30 days of issuance

Amendment No.: 186

Facility Operating License No. DPR-16. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1996 (61 FR 40019) Supersedes notice dated March 27, 1996 (61 FR 13526). The August 28, 1996, supplement provided updated and corrected TS and bases pages. These

revisions were within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. Therefore renoticing was not warranted. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 3, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 22, 1996, as supplemented by letter dated July 3, 1996

Brief description of amendment: The amendment revises the Clinton Power Station Technical Specifications for the drywell to permit bypass testing on a 10-year frequency with increased testing if performance degrades, changes the drywell air lock testing and surveillance requirements, deletes action notes for the drywell air lock and drywell isolation valves when the bypass leakage limit is not met, and deletes the specific leakage limits for the drywell air lock seal.

Date of issuance: September 4, 1996

Effective date: September 4, 1996

Amendment No.: 106

Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 24, 1996 (61 FR 18170) The July 3, 1996, submittal consisted of supporting technical information which did not change the staff's initial proposed no significant hazards consideration determination or expand the scope of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 20, 1996

Description of amendment request: The proposed amendment modifies the Seabrook Station Appendix A Technical Specifications (TSs) for the Electrical Power Systems, Onsite Power Distribution. Specifically, the proposed amendment changes TS 3.8.3.1, Action a., to increase from 8 hours to 7 days the allowable time that 480-volt Emergency Bus tE64 may be less than fully energized.

Date of issuance: August 30, 1996

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 48

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 26, 1996 (61 FR 33142) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: location: Exeter Public Library, Founders Park, Exeter, NH 03833

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: April 25, 1996

Brief description of amendment: The amendment modifies the calibration requirement for the source range monitors and intermediate range monitors by noting that the sensors are excluded.

Date of issuance: August 19, 1996

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 96

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 19, 1996 (61 FR 31183) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: March 28, 1996

Brief description of amendment: The amendment changes Technical Specification 3.7.7, ''Sealed Source Contamination,'' and its Bases that modify the criteria for testing sealed sources for contamination and leakage. The approved changes are consistent with the testing criteria currently used at the Millstone Nuclear Power Station, Unit No. 3, the Haddam Neck Plant, and the Seabrook Station.

Date of issuance: September 4, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 202

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20853) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 1996 No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Pacific Gas and Electric Company, Docket No. 50-133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: March 13, 1996

Brief description of amendment: This amendment revised the Technical Specification by incorporating position changes to reflect a proposed plant staff reorganization.

Date of issuance: September 6, 1996

Effective date: This license amendment is effective as of the date of its issuance and must be fully implemented no later than 30 days from the date of issuance.

Amendment No.: 31Facility License No. DPR-7: This amendment revised the Technical Specifications

Date of initial notice in Federal Register: April 24, 1996 (61 FR 18174) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Humboldt County Library, 1313 3rd Street, Eureka, California 95501

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 23, 1996, as supplemented by letter dated June 28, 1996

Brief description of amendments: These amendments change the Technical Specification Requirement 4.6.2.1d concerning drywell-to-suppression chamber bypass testing interval to correspond with the interval for Primary Containment Integrated Leak Rate Testing under 10 CFR Part 50, Appendix J, Option B.

Date of issuance: September 6, 1996

Effective date: September 6, 1996

Amendment Nos.: 160 and 131

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 10, 1996 (61 FR 15992) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 21, 1996, as supplemented August 19, 1996, and August 21, 1996.

Brief description of amendment: The amendment extends the surveillance interval on certain instruments from 18 to 24 months.

Date of issuance: September 5, 1996

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 168

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1996 (61 FR 49027) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 6, 1996, as supplemented by letter dated May 30, 1996.

Brief description of amendment: The amendment changes Technical Specification (TS) 3.8.1, ''A.C. Sources - Operating,'' to decrease the minimum fuel oil storage capacity of the Emergency Diesel Generator Fuel Oil Storage Tanks, from 48,800 to 44,800 gallons. In addition, footnote ** is deleted from TS 3.8.1.1.b.2. The TS change also adds an Action Statement to address remedial action when a fuel oil transfer pump becomes inoperable.

Date of issuance: September 10, 1996

Effective date: As of date of issuance, to be implemented within 90 days.

Amendment No.: 96

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 3, 1996 (61 FR 34897) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Southern California Edison Company, et al, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: December 22, 1995

Brief description of amendment: The change revises the San Onofre Unit 1 License Condition to delete a reference to License Condition 2.C(4) from License Condition 2.D. This change eliminates a reporting requirement for violations of the physical protection plans that is redundant to reporting requirements in 10 CFR 73.71 and 10 CFR Part 73 Appendix G.

Date of issuance: August 30, 1996

Effective date: August 30, 1996 and shall be implemented no later than 30 days from August 30, 1996.

Amendment No.: 157

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1996 (61 FR 40028) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Science Library, University of California, Irvine, California 92713

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 12, 1996

Brief description of amendments: The amendments revise the reactor core safety limits, Overtemperature delta T (OTDT) and Overpressure delta T (OPDT) reactor trip setpoints and allowable values, and the power distribution limits associated with implementation of Relaxed Axial Offset Control (RAOC) and F_Q surveillance. The amendments also include changes to the Bases associated with these specifications and surveillances.

Date of issuance: September 3, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 121 and 113

Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1996 (61 FR 40029) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 20, 1996

Brief description of amendments: The amendments revise the Technical Specifications to reflect the implementation of 10 CFR Part 50, Appendix J, Option B.

Date of issuance: September 3, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 122 and 114

Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1996 (61 FR 40030) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: July 31, 1996

Brief description of amendment: The amendment revises Technical Specification 3.6.12 to allow a one-time extension of the 3-month surveillance requirement for the ice condenser lower inlet doors.

Date of issuance: September 9, 1996

Effective date: As of the date of issuance, to be implemented within 30 days

Amendment No.: 3

Facility Operating License No. NPF-90: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: August 8, 1996 (61 FR 41431) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1996. No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: February 19, 1996, as supplemented on July 3 and August 26, 1996

Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant Technical Specification Section 4.2 and its associated basis by allowing the application of a voltage-based repair limit for the steam generator tube support plate intersections experiencing outside diameter stress corrosion cracking. The repair criteria are based on guidance provided in Generic Letter 95-05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes affected by Outside Diameter Stress Corrosion Cracking,'' dated August 3, 1995, and on associated industry guidance.

Date of issuance: September 11, 1996

Effective date: September 11, 1996, and is to be implemented within 30 days of the date of issuance.

Amendment No.: 126

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 10, 1996 (61 FR 15999) The July 3 and August 26, 1996, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 24, 1995, and superseded by letter dated May 16, 1996.

Brief description of amendment: The amendment adopts ASTM D3803-1989 as the laboratory testing standard for charcoal samples from the charcoal absorbers in the control room filtration system, control building pressurization system, and the auxiliary/fuel building emergency exhaust system. The output of the heaters in the control building pressurization system is reduced from a nominal 15kW to a nominal 5kW and the acceptance criterion for the testing of the charcoal absorbers is changed.

Date of issuance: September 4, 1996

Effective date: September 4, 1996, to be implemented within 120 days of the date of issuance.

Amendment No.: 102

Facility Operating License No. NPF-42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 5, 1996 (61 FR 28622) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621 Dated at Rockville, Maryland, this 18th day of September 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II Office of Nuclear Reactor Regulation

[Doc. 96-24413 Filed 9-24-96; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Computer Matching Programs OPM/Department of Labor, Office of Workers' Compensation Programs

AGENCY: Office of Personnel Management (OPM).

ACTION: Publication of notice of computer matching to comply with Public Law 100–503, the Computer Matching and Privacy Act of 1988.

SUMMARY: OPM is publishing notice of its computer matching program with the Department of Labor, Office of Workers' Compensation Programs (OWCP) to meet the reporting and publication requirements of Public Law 100–503. The purpose of the match is to identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) or the Federal Employees' Retirement System Act (FERSA) and the Federal Employees' Compensation Act (FECA). The match will identify individuals receiving prohibited concurrent benefits under CSRA or FERSA and the FECA. Both the CSRA and FERSA, on one hand, and the FECA, on the other, prohibit the receipt of certain concurrent payments covering the same period of time. The match will involve the OPM system of records published as OPM CENTRAL–1, Civil Service Retirement and Insurance Records at 60 FR 63075, December 8, 1995, and the Department of Labor system of records published as DOL/GOVT–1, entitled ''Office of Workers' Compensation Programs, Federal Employees' Compensation Act File'', at 58 FR 49548, on September 23, 1993, with amendments published at 59 FR 47361 on September 15, 1994.

DATE: The matching program will begin in October 1996, or 40 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. The data exchange will begin at a date mutually agreed upon between OPM and OWCP after October 1, 1996, unless comments are received which will result in a contrary determination. Subsequent matches will take place semi-annually on a recurring basis until one of the parties advises the other in writing of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESS: Send comments to Kathleen M. McGettigan, Assistant Director for

Financial Control and Management, Office of Personnel Management, Room 4312, 1900 E. Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster (202) 606–2115.

SUPPLEMENTARY INFORMATION: The computer matching program between OPM and OWCP will involve comparison of beneficiaries under the FECA and the CSRA or the FERSA. The match will identify beneficiaries receiving payment of compensation for wage loss or death under the FECA and those receiving retirement or death benefits under the CSRA or FERSA covering the same period of time.

The concurrent receipt of benefits under the FECA based on wage loss and under the CSRA or FERSA for retirement, or under the FECA, CSRA, or FERSA based on the death of the Federal employee is prohibited. It is the responsibility of OPM to monitor retirement annuity and survivor benefits paid under the CSRA or FERSA to ensure that its beneficiaries are not receiving benefits under the FECA which are prohibited during receipt of benefits under the CSRA or FERSA. Similarly, it is the responsibility of the OWCP to ensure that Federal employees or dependents of deceased Federal employees receiving benefits under the FECA are not also receiving benefits under the CSRA or FERSA which are prohibited.

By comparing the information received through this computer matching program on a recurring basis, the agencies will be able to make a timely and more accurate adjustment in the benefits payable. The match will prevent overpayments, fraud and abuse, thus assuring that benefit payments are proper under the appropriate Acts.

Additional information, regarding the matching program, including the authority for the program, a description of the matches, the personnel records to be matched, the dates of the program, security safeguards, and plans for disposition following completion of the matches are provided in the text below.

Office of Personnel Management.

James B. King,

Director.

Matching of Records between Office of Workers' Compensation Programs and Office of Personnel Management

A. Authority: The Civil Service Retirement Act (CSRA), U.S.C., 8331, et seq.; the Federal Employees' Retirement System Act (FERSA), 5 U.S.C., 8401, et seq.; and the Federal Employees' Compensation Act (FECA), 5 U.S.C., 8101, et seq.

B. Description of Computer Matching Program: OPM pays annuities or survivor benefits to individuals who may also receive benefits under the FECA. It is the responsibility of OPM as the administrator of the CSRA and the FERSA to assure that such benefit payments are proper and to prevent fraud and abuse. The computer matching program is an efficient and nonobstrusive method of determining whether these individuals are receiving benefits from both OWCP and OPM prohibited by the FECA, CSRA and FERSA. OWCP will provide OPM with extracts of its payment files containing data (names, social security numbers, dates of birth, claim numbers, payee relationship codes, addresses, zip codes, and payment data) needed to identify the individual and determine if he or she is receiving benefits from both organizations at the same time. OPM will match OWCP's extract of its payment files against its payment records for the same dates to determine if benefits were being paid on the same date by both agencies. OPM will provide OWCP with a list of valid matches. Both organizations will detect, identify, and follow-up on payment of prohibited dual benefits. An individual identified as receiving prohibited dual benefits will be offered an opportunity to contest the findings and proposed actions and the opportunity to elect the benefits he or she wishes to receive. The organization responsible for initiating the recovery of the overpayment of benefits will afford the individual due process before any payment modifications are made.

C. Personal Records to be Matched: The OPM system of records published as OPM–CENTRAL–1, Civil Service Retirement and Insurance Records, at 60 FR 63075, December 8, 1995, which contains payment data on recipients of CSRA and FERSA benefits disbursed by OPM will be matched to OWCP records published at 58 FR 49548, on September 23, 1993 with amendments published at 59 FR 47361 on September 15, 1994, which contains data pertinent to the payment of Federal employees and their dependents under the FECA.

D. Dates: Data exchanges will begin during calendar year 1996 at a mutually agreeable time and will be repeated every six months, until one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

E. Privacy Safeguards and Security: The personal privacy of the individuals whose names are included in the tapes is protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's Guidance Interpreting the Provisions of Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988 (54 FR 25818). Security safeguards include limiting access only to the files agreed to and only to agency personnel having a ''need to know''. All automated records will be password protected and the data listing will be locked in file areas after normal duty hours. Records matched or created by the match will be stored in an area that is physically safe from access by unauthorized persons during duty hours and nonduty hours or when not in use.

F. Disposal of Records: The files will remain the property of the respective source agencies and all records including those not containing matches will be returned to the source agency for destruction. ''Hits,'' the records relating to matched individuals, will be disposed of in accordance with the provisions of the Privacy Act and the Federal Record Schedules after serving their purpose. The data obtained from confirmed hits will be entered in the claims file, subject to release only in accordance with the provisions of the Privacy Act.

[FR Doc. 96–24565 Filed 9–24–96; 8:45 am]

BILLING CODE 6325–01–M

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Social Security Administration

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a computer matching program between the OPM and the Social Security Administration (SSA) for public comment.

SUMMARY: OPM is publishing notice of its computer matching program with SSA to meet the reporting and publication requirements of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988. In this match, SSA records are used in redetermining and recomputing certain annuitants' benefits where computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and for annuitants under the Federal Employees' Retirement System (FERS) who have a CSRS component in their FERS annuity computation. The purpose of this match is to identify these beneficiaries.

DATES: This proposed action will become effective 40 days after the agreements by the parties participating in the match have been submitted to

Congress and the Office of Management and Budget unless either the Congress or the Office of Management and Budget objects thereto. Any public comment on this matching program must be submitted within the 30-day public notice period, which begins on the publication date of this notice.

ADDRESS: Any interested party may submit written comments to Kathleen M. McGettigan, Assistant Director for Financial Control and Management, Retirement and Insurance Service, Office of Personnel Management, 1900 E Street, NW, Room 4312, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606–2115.

SUPPLEMENTARY INFORMATION: OPM and SSA have concluded an agreement to conduct a computer matching program between the two agencies. The purpose of the agreement is to establish the conditions under which SSA agrees to the disclosure of Social Security benefit and/or tax return information to the OPM. OPM, as specified in 5 U.S.C. 8332(j)(1), has an obligation to use post 1956 earnings data in redetermining and recomputing annuities for certain CSRS and FERS annuitants. Section 1106 of the Social Security Act (42 U.S.C.) requires that SSA disclose the needed data to OPM.

Office of Personnel Management.

James B. King,

Director.

Report of Computer Matching Agreement Between the Office of Personnel Management and the Social Security Administration

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

Chapters 83 and 84 of title 5, United States Code (U.S.C.), provide the basis for computing annuities under the Civil Service Retirement System and the Federal Employees' Retirement System respectively, and require release of information by SSA in order to administer post 1956 data exchanges. In this match, SSA records are used in redetermining and recomputing certain annuitants' benefits where computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and for annuitants under the Federal Employees' Retirement System (FERS) who have a CSRS component in their FERS annuity computation. The purpose of this match is to identify these beneficiaries.

C. Authority for Conducting the Match Program

Chapters 83 and 84, title 5, United States Code, section 1106 of the Social Security Act (42 U.S.C. 1306), and the Internal Revenue Code (26 U.S.C. 6103).

D. Categories of Records and Individuals Covered by the Match

SSA will disclose data from its Master Beneficiary Record and Master Earnings Files, and manually extracted post 1956 military wage information from SSA's ''1086'' microfilm file when required. SSA has published routine uses for these systems of records, published at 59 FR 62407, December 5, 1994 and 60 FR 2144, January 6, 1995, last revised at 60 FR 52948, on October 1, 1995.

OPM's records consist of annuity data from its system of records entitled OPM/Central–1—Civil Service Retirement and Insurance Records, last published in the Federal Register at 60 FR 63075, December 8, 1995.

E. Description of Matching Program

OPM provides a monthly magnetic tape to SSA containing data on those individuals for whom OPM requests post 1956 military service benefit information. These elements will be matched against SSA records. SSA furnishes OPM by magnetic tape benefit information on these individuals, including the amount of the SSA benefit attributable to the post 1956 military service (which constitutes the CSRS or FERS annuity reduction amount).

F. Privacy Safeguards and Security

The personal privacy of the individuals whose names are included in the tapes are protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's ''Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988''. Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe from access by unauthorized personnel during duty hours as well as nonduty hours or when not in use. Records used in this exchange and any records created by this exchange will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records.

Both SSA and OPM have the right to make onsite inspections or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

G. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Congress and the Office of Management and Budget. OPM's report to these parties must be received at least 40 days prior to the initiation of any matching activity. If no objections are raised by either Congress or OMB, and the mandatory 30 day public notice period for comment for this Federal Register notice expires, with no significant receipt of adverse public comments resulting in a contrary determination, then this computer matching program becomes effective. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552a(o)(2)(D),

[FR Doc. 96–24566 Filed 9–24–96; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Sunshine Act Meeting; Board of Governors

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:00 a.m. on Tuesday, October 8, 1996, in Anchorage, Alaska. The meeting is open to the public and will be held at the Hotel Captain Cook, 4th and K Streets, Anchorage, in the Mid Deck Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

There will also be a session of the Board on Monday, October 7, 1996, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

October 8—8:00 a.m. (Open)

1. Minutes of the Previous Meeting, September 9–10, 1996.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon)
3. Board of Governors 1997 Meeting Schedule. (Chairman del Junco)
4. Office of the Governors FY 1997 Budget. (Chairman del Junco)

5. Consideration of Amendments to BOG Bylaws. (Chairman del Junco)
6. Review of the FY 1997–2001 Capital Investment Plan. (Michael J. Riley, Chief Financial Officer and Senior Vice President)
7. Report on the Western Area. (Craig G. Wade, Vice President, Western Area Operations)
8. Tentative Agenda for the November 4–5, 1996, meeting in Washington, D.C.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–24748 Filed 9–23–96; 2:21 pm]

BILLING CODE 7710–12–M

THE PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

The Twelfth Meeting of the President's Council on Sustainable Development (PCS) in Washington, DC

SUMMARY: The President's Council on Sustainable Development, a partnership of industry, government, and environmental, labor, and Native American organizations, will convene its twelfth meeting in Washington, DC on October 16, 1996. The Council transmitted its report, entitled Sustainable America: A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future, to President Clinton on March 7, 1996. The text of the Council's report can be found on the Internet at http://www.whitehouse.gov/PCs. The Council met on May 30, 1996 to launch a series of activities to implement recommendations contained in its report.

During the upcoming meeting, the President's Council on Sustainable Development will discuss the implementation activities undertaken for the recommendations contained in its report. The discussion will be guided by the following agenda:

I. Update on implementation activities undertaken by the Council since its May 30 meeting
II. Public comment period

Dates/Times: Wednesday, October 16, 1996, 2:00–4:30 p.m.

Place: The Renaissance Mayflower Hotel, Grand Ballroom (Lobby Level), 1127 Connecticut Avenue, NW., Washington, DC 20036, phone: (202) 347–3000.

Status: Open to the Public: Public comments are welcome. Comments may be submitted orally on October 16 or in writing any time prior to or during the October 16 meeting. Please submit written comments prior to meeting to: PCS, Public Comments, 730 Jackson Place, NW., Washington, DC 20503, or fax to: 202/408–6839.

Contact: Patricia Sinicropi, Administrative Officer, 202/408–5296.

Sign Language interpreter: Please call the contact if you will need a sign language interpreter.

Keith Laughlin,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 96–24576 Filed 9–24–96; 8:45 am]

BILLING CODE 3125–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Approval of Existing Collection:
Rule 10b–17, SEC File No. 270–427, OMB Control No. 3235–new
Rule 11a1–1(T), SEC File No. 270–428, OMB Control No. 3235–new
Rule 15c2–7, SEC File No. 270–420, OMB Control No. 3235–new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 2501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following summaries of collections for public comment.

Rule 10b–17 (17 CFR 240.10b–17), requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following actions relating to such class of securities: (1) A dividend; (2) a stock split; or (3) a rights or other subscription offering. Notice shall be: given to the National Association of Securities Dealers, Inc.; in accordance with the procedures of the national securities exchange upon which the securities are registered; or may be waived by the Commission.

There are approximately 1,900 respondents that require an aggregate total of 3,800 hours to comply with this rule. Each of these approximately 1,900 issuers makes an estimated 2 annual responses, for an aggregate of 3,800 responses per year. Each response takes approximately 1 hour to complete. Thus, the total compliance burden per year is 3,800 burden hours. The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $380,000 (3,800 hours @ $100).

Rule 11a1–1(T) (17 CFR 240.11a1–1(T)), provides that an exchange member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for the account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

There are approximately 1,000 respondents that require an aggregate total of 333 hours to comply with this rule. Each of these approximately 1,000 respondents makes an estimated 20 annual responses, for an aggregate of 20,000 responses per year. Each response takes approximately 1 minute to complete. Thus, the total compliance burden per year is 333 hours (20,000 minutes/60 minutes per hour = 333 hours). The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $33,333 (333 hours @ $100).

Rule 15c2–7 (17 CFR 240.15c2–7) renders it unlawful for a broker-dealer to furnish a quotation for a security to an inter-dealer-quotation-system unless certain conditions are met: (a) The appearing broker-dealer discloses whether the quote is on behalf of another broker-dealer, and if so, the identity of such other broker-dealer; (b) the appearing broker-dealer discloses whether the quotation is submitted pursuant to any other arrangement between or among broker-dealers; (c) every broker-dealer who enters into any arrangement by which two or more broker-dealers submit quotations with respect to a particular security must inform all other broker-dealers of the existence of such an arrangement and the identity of the parties thereto; and (d) the quotation system must be one which makes it a general practice to differentiate between correspondent arrangements and all other arrangements, and which discloses the identities of all other broker-dealers where that information is required to be supplied to the quotation system. The purpose of the rule is to ensure that an inter-dealer-quotation-system clearly reveals where two or more quotations in

different names for a particular security represent a single quotation or where one broker-dealer appears as a correspondent of another.

The rule requires the relevant information to be disclosed for each quotation submitted to an inter-dealer-quotation-system. Each registered market maker on an inter-dealer-quotation-system is required to disclose any correspondent broker-dealers for a particular security at the time the market maker initially registers with the inter-dealer-quotation-system as a market maker for such security. After the market maker's initial disclosure, the information is disclosed automatically through such market maker's electronic submission of a quotation to the inter-dealer-quotation-system. An aggregate total of approximately 20 of these initial disclosures are made per year. Each such initial disclosure takes approximately 1 minute to complete. Thus, the total compliance burden per year is approximately 20 minutes (0.33 burden hours).

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: September 13, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24570 Filed 9–24–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22232; 812–9624]

Diversified Investors Strategic Variable Funds, et al.

September 19, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Diversified Investors Strategic Variable Funds (''Strategic Variable Funds''); Diversified Investors Variable Funds (''Diversified Variable Funds''); Diversified Investors Portfolios (''Diversified Portfolios''); AUSA Life Insurance Company, Inc. (''AUSA''), on behalf of itself and each future separate account (or subaccount thereof) established by AUSA and registered under the 1940 Act as a unit investment trust in connection with the offering by AUSA of group variable annuity contracts (''Future Separate Accounts''); Diversified Investment Advisors, Inc. (''Investment Advisors''), on behalf of itself and each open-end management investment company or series thereof organized in the future which becomes a member of the same ''group of investment companies'' (as defined in Rule 11a–3 of the 1940 Act) as, and which is the underlying investment vehicle for, a Future Separate Account (''Future Funds''); and Diversified Investors Securities Corp. (''Securities'').

RELEVANT ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemption from Section 12(d) of the 1940 Act, and under Sections 6(c) and 17(b) of the 1940 Act, granting exemption from Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: The requested order would permit Applicants to create a ''fund of funds'' that initially would have three subaccounts. Each subaccount would allocate its assets to the purchase of units of Diversified Variable Funds or of the Future Separate Accounts (hereinafter the ''Underlying Spokes'') without regard to the percentage limitations of Section 12(d)(1) of the 1940 Act. The Underlying Spokes, in turn, would invest in a corresponding series of Diversified Portfolios or of a Future Fund (hereinafter the ''Underlying Hubs'').

FILING DATES: The application was filed on June 12, 1995, and was amended and restated on September 25, 1995, January 29, 1996, July 15, 1996, August 22, 1996, and September 9, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 15, 1996, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 4 Manhattanville Road, Purchase, New York 10577.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. AUSA is a New York stock life insurance company, and a wholly owned indirect subsidiary of AEGON nv, a Netherlands corporation which is a publicly traded international insurance group.

2. Strategic Variable Funds is a separate account of AUSA, and is registered under the 1940 Act as an open-end management investment company.

3. Diversified Variable Funds is a separate account of AUSA and a unit investment trust registered under the 1940 Act. Diversified Variable Funds consists of fourteen separate subaccounts. Of these subaccounts, twelve invest in Diversified Portfolios, and eleven may serve as Underlying Spokes. Applicants state that each of the Future Separate Accounts (which will become Underlying Spokes) will be separate accounts (or subaccounts thereof) of AUSA, and will be registered under the 1940 Act as unit investment trusts.

4. Diversified Portfolios is organized as a trust under the laws of the State of New York, and is registered as an open-end management investment company under the 1940 Act. Diversified Portfolios consists of twelve separate series, eleven of which constitute the existing Underlying Hubs. Applicants state that each of the Future Funds (which will become Underlying Hubs) will be registered under the 1940 Act as open-end management investment companies (or will be a series of such a company).

5. Investment Advisors is a registered investment adviser under the Investment Advisers Act of 1940, and

also is an indirect wholly owned subsidiary of AEGON nv. Investment Advisors is the investment manager for Diversified Portfolios.

6. Securities, a Delaware corporation, is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc. Securities acts as distributor for group variable contracts issued by AUSA.

7. Applicants organized Strategic Variable Funds to operate as a ''fund of funds.'' Strategic Variable Funds will be one of the available investment vehicles underlying group variable annuity contracts offered by AUSA (''Variable Contracts''). Strategic Variable Funds initially will have three subaccounts (''Subaccounts''). Each Subaccount will invest all of its assets in units of the Underlying Spokes, and will allocate and reallocate its assets among the Underlying Spokes.

8. The Underlying Spokes are, or will be, ''feeder'' (or ''spoke'') funds in a ''master-feeder'' (or ''Hub and Spoke®'') [1] structure in which there are other feeders investing in the master funds. Each of the existing Underlying Spokes invests, and each future Underlying Spoke will invest, all of its assets in an Underlying Hub having the same investment objective and policies as the Underlying Spoke. Each existing Underlying Hub is advised by Investment Advisors and has one or more sub-advisers who are responsible for its day-to-day investment selections. In addition to the Underlying Spokes, each of the existing Underlying Hubs has, and each future Underlying Hub is expected to have, a number of additional ''spokes,'' including a mutual fund, a bank sponsored collective trust, and non-registered insurance company separate accounts. In the future, each Underlying Hub may sell interests to other eligible entities to the extent permitted by applicable law.

9. Allocations of a Subaccount's assets among units of the Underlying Spokes will be made consistent with its investment objective. For example, it is anticipated that an ''aggressive'' Subaccount would, under normal circumstances, invest substantially all of its assets in Underlying Spokes that in turn invest in Underlying Hubs investing in equity securities. The Underlying Spokes/Underlying Hubs in which each Subaccount will invest will be described in the Subaccount's prospectus. In addition, the prospectus will disclose the general ranges for investment by the Subaccount in each type of Underlying Spoke (i.e., equity, fixed-income, and money market), and in each specific Underlying Spoke. Contractholders will receive disclosure of any changes in the identity of the Underlying Spokes in which the Subaccount may invest (e.g., if a new Underlying Spoke is included) or any changes in the investment ranges. Allocations of a Subaccount's assets among Underlying Spokes initially will be made, and subsequently adjusted, by Investment Advisors in its role as investment manager to Strategic Variable Funds.

10. Applicants anticipate that Strategic Variable Funds, the Underlying Spokes, and the Underlying Hubs will be sold without a front-end sales charge, and will not be subject to any redemption charge, contingent deferred sales charge, or Rule 12b–1 fees. Applicants reserve the right, however, to charge sales charges and service fees in the future subject to Condition 5 below. The only direct expense payable by Strategic Variable Funds will be an asset allocation and administrative fee, in return for which investors in Strategic Variable Funds will receive allocation and other services provided by Investment Advisors and AUSA. Applicants anticipate that the asset allocation and administrative fee will be at a rate of .20% per annum of average daily net assets for each Subaccount.[2]

11. Each Subaccount will pay indirectly its proportional share of the expenses of the respective Underlying Spokes in which it invests. These expenses include daily charges for mortality and administrative expense risks which currently are charged against the net assets of the Underlying Spokes at an annual rate of .90%, but may be charged at a maximum annual rate of 1.25%. In addition, these expenses include the Underlying Spokes' proportional shares of the expenses of the Underlying Hubs in which they invest, which include advisory fees and other customary expenses of registered investment companies, primarily consisting of compensation to independent trustees, insurance premiums, fees and expenses of independent auditors and legal counsel, custodial fees and expenses, and accounting expenses.

[1] Hub and Spoke® is a registered service mark of Signature Financial Group, Inc.

[2] AUSA permits unlimited transfers without charge among the subaccounts of Diversified Variable Funds. AUSA, however, reserves the right to impose limitations upon the number and timing of such transfers and to impose transfer charges. AUSA also reserves the right to deduct an annual contract charge not to exceed $50.

Applicants' Legal Analysis

Section 12(d)(1)

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the Commission may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request an order under Section 6(c) exempting them from Section 12(d)(1) to permit Strategic Variable Funds to invest in the Underlying Spokes in excess of the percentage limitations of Section 12(d)(1).

3. Section 12(d)(1) is intended to prevent unregulated pyramiding of investment companies, and the abuses that are perceived to arise from such pyramiding. These abuses include the acquiring fund imposing undue influence over the acquired fund through the threat of large-scale redemptions and the layering of sales charges and advisory fees.

4. Applicants believe that Strategic Variable Funds is structured in a manner consistent with the intent of Section 12(d)(1) of the 1940 Act and which avoids the abuses intended to be prevented by that Section. Applicants state that the proposed structure of Strategic Variable Funds is very different from the structure of the investment companies whose practices led to the adoption of Section 12(d)(1) and its amendment in 1970. As required by Condition 1 below, Strategic Variable Funds and the Underlying Hubs must be part of the same ''group of investment companies,'' as defined in Rule 11a–3 under the 1940 Act. Underlying Spokes must be registered separate accounts (or subaccounts thereof) established by

AUSA in connection with the offering by AUSA of Variable Contracts. In addition, Investment Advisors will be the investment adviser to Strategic Variable Funds and each of the Underlying Hubs. Applicants assert that Investment Advisors and AUSA are governed by their obligations to the various funds at different levels, and that any allocation or reallocation by Investment Advisors of a Subaccount's assets among Underlying Spokes/Underlying Hubs will be made in accordance with these obligations. Finally, Applicants argue that AUSA's and Investment Advisors' self-interest will prompt them to maximize benefits to all shareholders, and not disrupt the operations of Strategic Variable Funds or any of the Underlying Spokes or Underlying Hubs.

5. Applicants believe that Strategic Variable Funds' asset and administrative fee will be justified by the incremental benefits, not otherwise available, of the professional assets allocation service that Investment Advisors would provide for investors choosing Strategic Variable Funds. In addition, Applicants note that, as required by Condition 4 below, before a Subaccount may adopt an asset allocation and administrative fee, the directors of Strategic Variable Funds, including the independent directors, must find that the fee is based on services that are in addition to, rather than duplicative of, services provided under any Underlying Hub's advisory contract. Moreover, Applicants assert that no fees for duplicative services can exist at the Underlying Spoke level, because no advisory fees are or will be charged at the Underlying Spoke level.

6. Applicants also state that no layering of sales charges will exist. Condition 5 below requires that Strategic Variable Funds' acquisition, disposition, or holding of interests directly in the Underlying Spokes and indirectly in the Underlying Hubs shall not be subject, directly or indirectly, to any sales charges or service fees as defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc.

7. Accordingly, Applicants believe that the requested exemption from Section 12(d)(1) is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the 1940 Act.

Section 17(a)

8. Section 17(a) of the 1940 Act makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Section 17(b) provides that the Commission shall exempt a proposed transaction from Section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the 1940 Act.

9. Applicants request exemptive relief from the prohibitions of Section 17(a) to allow the transactions described in the application. Applicants assert that the relief is consistent with the standards of Section 17(b), and that such relief should be granted for the same reasons set forth above under the discussion of Section 12(d)(1) of the 1940 Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Strategic Variable Funds and each Underlying Hub will be part of the same ''group of investment companies,'' as defined in Rule 11a–3 under the 1940 Act, and the Underlying Spokes will be registered separate accounts (of subaccounts thereof) established by AUSA in connection with its offering of the Variable Contracts.[3]

2. No Underlying Hub shall acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the 1940 Act, and no Underlying Spoke shall acquire securities of any other investment company except in conformity with Section 12(d)(1)(E) of the 1940 Act.

3. A majority of the directors[4] of Strategic Variable Funds will not be ''interested persons,'' as defined in Section 2(a)(19) of the 1940 Act (''Independent Directors'').

4. Before approving any advisory contract under Section 15 of the 1940 Act, the directors of Strategic Variable Funds, including a majority of the Independent Directors, shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Hub's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of Strategic Variable Funds.

5. Strategic Variable Funds' acquisition, disposition, or holding of interests directly in the Underlying Spokes and indirectly in the Underlying Hubs shall not be subject, directly or indirectly, to any sales charges or service fees as such terms are defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc.

6. Applicants will provide the following information, in electronic format, to the Chief Financial Analyst of the Division of Investment Management of the Commission: monthly average total assets for each Subaccount and each of its Underlying Spokes and Underlying Hubs; monthly purchases and redemptions (other than by exchange) for each Subaccount and each of its Underlying Spokes and Underlying Hubs; monthly exchanges into and out of each Subaccount and each of its Underlying Spokes; month-end allocations of each Subaccount's assets among its Underlying Spokes; annual expense ratios for each Subaccount and each of its Underlying Spokes and Underlying Hubs; and a description of any vote taken by the unit holders of any Underlying Spoke, including a statement of the percentage of votes cast for and against the proposal by Strategic Variable Funds and by the other unit holders of the Underlying Spoke. Such information will be provided as soon as reasonably practicable following each fiscal year-end of Strategic Variable Funds (unless the Chief Financial Analyst shall notify Strategic Variable Funds or Investment Advisors in writing that such information need no longer be submitted).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24490 Filed 9–24–96; 8:45 am]

BILLING CODE 8010–01–M

[3] Because the Underlying Spokes will be unit investment trusts, they do not fall within the technical definition of ''group of investment companies'' under Rule 11a–3(a)(5) of the 1940 Act, which only applies to open-end investment companies. Applicants note that although the Underlying Spokes do not technically comply with the definition, the policy underlying a requirement that all funds in a ''fund of funds'' be part of the same group of investment companies is served by the proposed structure because AUSA is an affiliated person of Investment Advisors.

[4] Although Strategic Variable Funds will be a separate account of an insurance company, and not a corporation, trust, or similar entity, Applicants state that Strategic Variable Funds will create a board of individuals who will function as ''directors'' of Strategic Variable Funds within the meaning of Section 2(a))(12) of the 1940 Act for purposes of exercising the function of directors under the 1940 Act and the rules thereunder.

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 23, 1996.

A closed meeting will be held on Friday, September 27, 1996, at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, September 27, 1996, at 9:30 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

September 23, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24697 Filed 9–23–96; 11:53 am]

BILLING CODE 8010–01–M

[Release No. 34–37696; File No. SR–CBOE–96–44]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to the Listing and Trading of Options on the Goldman, Sachs Technology Composite Sub-Indexes

September 17, 1996.

On July 2, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options on six different narrow-based indexes, each of which is composed of components from the GSTI Composite Index (''GSTI Composite Index'').[3] The six sub-indexes are: the GSTI Internet Index (''Internet Index''), the GSTI Software Index (''Software Index''), the GSTI Semiconductor Index (''Semiconductor Index''), the GSTI Hardware Index (''Hardware Index''), the GSTI Services Index (''Services Index''), and the GSTI Multimedia Networking Index (''Multimedia Index'') (collectively ''GSTI Sub-Indexes'' or ''Sub-Indexes''). Notice of the proposed rule change appeared in the Federal Register on August 8, 1996.[4] No comments were received on the proposal. On September 16, 1996, CBOE filed Amendment No. 1 to the proposal to address issues related to index maintenance criteria.[5] This order approves the proposal, as amended, and solicits comments on Amendment No. 1.

I. Description of the Proposal

The purpose of the proposal is to permit the Exchange to list and trade cash-settled, European-style index options on the GSTI Sub-Indexes. Each GSTI Sub-Index is narrow-based, modified-capitalization weighted, and composed of components of the GSTI Composite Index. Goldman, Sachs & Co. has designated a GSTI Committee (''Committee'') to oversee the selection of GSTI Sub-Index components, as discussed below.

Index Design. As discussed in greater detail in SR–CBOE–96–43, the GSTI Composite Index is comprised of the universe of securities that satisfy objective criteria (GSTI Index Rules'').[6] Upon inclusion in the GSTI Composite Index, the Committee then selects and assigns stocks to the GSTI Sub-Indexes based upon relevant qualitative criteria. Furthermore, any stock in a Sub-Index must appear in the GSTI Composite Index. Stocks may be represented in one or more GSTI Sub-Indexes, however, not all GSTI Composite Index components necessarily will be assigned to a GSTI Sub-Index. All of the components of the GSTI Composite Index currently trade on the New York Stock Exchange (''NYSE''), the American Stock Exchange or Nasdaq.

Calculation. The Sub-Index will be calculated by CBOE on a real-time basis using last-sale prices and will be disseminated every 15 seconds by CBOE.[7] If a component security is not currently being traded on its primary market, the most recent price at which the security traded on such market will be used in the Index calculation.

The Sub-Indexes are calculated on a ''modified capitalization-weighted'' method, which is a hybrid between equal weighting (which may impose liquidity concerns for smaller-cap stocks) and capitalization weighting (which may result in two or three stocks dominating an index's performance). Under the method employed for each of the sub-indexes, the maximum weight for the largest stock in the sub-index will be set to no higher than 25% on the semiannual rebalancing date. The maximum weight for the second largest stock will be set to no higher than 20% of the maximum weight for the third largest stock and any stock thereafter will be set to no higher than 15% on the rebalancing date. The weight of all the remaining Sub-Index stocks shall be market capitalization weighted. Thus, the weights of these remaining stocks

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[1] 15 U.S.C. § 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b–4 (1994).

[3] Concurrent with this order, the Commission is approving a CBOE proposal to list and trade options on the Goldman Sachs Technology Composite Index, a broad-based, capitalization weighted index composed of the universe of technology-related company stocks meeting certain objective criteria, as amended. *See* Securities Exchange Act Release No. 37693 (''SR–CBOE–96–43''). A list of components for the Composite Index or any of the Sub-Indexes is available at the Commission or CBOE.

[4] Securities Exchange Act Release No. 37509 (July 31, 1996), 61 FR 41434.

[5] Letter from Eileen Smith, CBOE, to Stephen M. Youhn, SEC, dated September 16, 1996.

[6] All securities satisfying the following criteria are automatically included in the GSTI Composite Index: First, a company's stock must trade on the New York Stock Exchange, the American Stock Exchange or through the facilities of the Nasdaq, and be a ''reported security'' under rule 11Aa3–1. Only outstanding common shares are eligible for inclusion. Additionally, only foreign companies whose primary market is in the United States will be eligible for the Index; American Depositary Receipts are not eligible. Second, the total market capitalization of the company's stock must be equal to or greater than the capitalization ''cutoff'' value. The initial base period ''cutoff'' value will be $600 million, but this value will be adjusted on each semiannual rebalancing date (as described below) to reflect the price performance of the Index since the base period and rounded up to the nearest $50 million. Index constituents with capitalization below 50% of the ''cutoff'' value on a semiannual rebalancing date shall be removed after the close on the effective date of the rebalancing. Third, company stocks with a public float below 20% of shares issued and outstanding are not eligible for inclusion in the Index. Fourth, the company stock must have annualized share turnover of 30% or more, based on its average daily share volume for the six calendar months prior to inclusion in the Index. Fifth, the components must be from a group of Standard Industrial Classification codes or Russell Industry codes.

[7] Telephone conversation between Eileen Smith, CBOE and Sharon Lawson, SEC, on September 17, 1996. The original filing proposed that the Sub-Index values be calculated by CBOE or a designee of Goldman, Sachs.

are not ''capped.'' At the time of semi-annual rebalancing, stocks with Sub-Index weights in excess of their capped weight in that Sub-Index, will be restored to the appropriate capped weight.

For stocks which are not ''capped,'' the number of index shares will equal the company's outstanding common shares. For stocks which are capped, index shares will equal its maximum weight, multiplied by the adjusted total market capitalization of the sub-index, divided by the stock's closing price on the rebalancing date. The index's adjusted total market capitalization is the total outstanding market capitalization adjusted to reflect the number of ''capped'' stocks.

The divisor for each Sub-Index was initially calculated to yield a benchmark value of 100.00 at the close of trading on April 30, 1996. The divisor for each Sub-Index will be adjusted as needed to ensure continuity in each index whenever there are additions or deletions from an index, share changes, or adjustments to a component's price to reflect rights offerings, spinoffs, and special cash dividends.

Maintenance. The Sub-Indexes will be maintained by CBOE and the GSTI Committee. The GSTI Composite Index will be adjusted on each semi-annual rebalancing date by adding or deleting stocks according to the inclusion criteria detailed in SR–CBOE–96–43.[8] All changes to the GSTI Composite Index will then be implemented after the close of trading on the effective date, which will be the third Friday of January and July. The rebalancing date will be 7 business days prior to the effective date.

As soon after the close of trading on the day following the rebalancing date for the GSTI Composite Index, the Exchange will provide to the Committee a list of all constituent changes to the GSTI Composite Index. Upon receipt of this list from the Exchange, the Committee will meet to determine any changes to the GSTI Sub-Indexes.

The Committee will notify CBOE of any change in composition for any of the GSTI Sub-Indexes before trading starts on the trading day after the Exchange has provided the Composite Index component list to the Committee.[9] The Exchange, in turn, will disseminate the information concerning the components of the GSTI Sub-Indexes to the public at least five days before the effective date, wherever possible. The Committee retains discretion to add or delete stocks from the GSTI Sub-Indexes at the rebalancing or to change a stock's industry classification. A stock must appear in the GSTI Composite Index to be eligible for inclusion in a Sub-Index. At the discretion of the Committee, a stock may also be removed from a Sub-Index due to lack of industry representation in the Sub-Index.

The maintenance criteria applicable to the GSTI Composite Index, as described in SR–CBOE–96–43, also will apply to the GSTI Sub-Indexes. First, at least 75% of the weight of any Sub-Index must be options eligible pursuant to CBOE Rule 5.3. Second, Sub-Index constituents with capitalization below 50% of the ''cutoff'' value on a semiannual rebalancing date shall be removed after the close on the effective date of the rebalancing. Third, if the market capitalization of any component drops below $75 million at the time of the semiannual rebalancing, it must be options eligible.[10] Fourth, no more than 10% of the weight of a Sub-Index may be composed of stocks with average daily trading volume for the previous six-month period of less than 20,000 shares. Finally, at no time will a Sub-Index fall to less than 6 stocks.[11] In the event that a Sub-Index does not comply with these maintenance criteria, CBOE will notify Commission staff to determine the appropriate regulatory response. Such responses could include, but are not limited to, the removal of securities from a Sub-Index, prohibiting opening transactions, or discontinuing the listing of new series in any Sub-Index.[12]

When a stock is ''Fast Added'' to the GSTI Composite Index, as described in SR–CBOE–96–43, the stock may be ''Fast Added'' to one or more GSTI Sub-Indexes at the same time. If added to a Sub-Index, the stock's weight cannot exceed the appropriate cap for that Sub-Index. If a stock is ''Fast Deleted'' from the GSTI Composite Index, it will be removed from all GSTI Sub-Indexes at the same time.

In the case of a merger, the Committee will decide the Sub-Index classification of the merged company. If the weight of the merged company would exceed the relevant cap for the Sub-Index to which it is assigned, the weight of the company will be capped at the time that the merger is completed. The index shares of all other stocks in the effected Sub-Index will remain unchanged.

As discussed above, the Committee is responsible for making component changes to the Sub-Indexes. Accordingly, a ''chinese wall'' has been erected around the personnel at Goldman, Sachs who have access to information concerning changes and adjustments to the GSTI Composite Index and Sub-Indexes. Details of Goldman, Sachs ''chinese wall'' procedures, which are closely modeled on existing procedures for other Goldman, Sachs derivative products, have been submitted to the Commission under separate cover.

Index Option Trading. The Exchange proposes to base trading in options on the GSTI Sub-Indexes on the full value of the relevant Sub-Index. The Exchange may list full-value long-term index option series (''LEAPS®''), as provided in Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the appropriate Sub-Index (all such LEAPS series are hereinafter referred to as ''LEAPS''). The current and closing index value of any such reduced-value LEAPS will, after such initial computation, be rounded to the nearest one-hundredth. Strike prices will be set to bracket the index in a minimum of 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be 1/8th. The trading hours for options on the Index will be from 8:30 a.m. to 3:10 p.m. Chicago time.

Exercise and Settlement. GSTI Sub-Index options will have European-style exercise and will be ''A.M.-settled index options'' within the meaning of the Rules in Chapter XXIV, including Rule 24.9, which is being amended to refer specifically to GSTI Sub-Index options. The last reported sale price of such a component security shall be used in any case where that component security does not open for trading on that day.[13]

[8] *See supra* note 6. The GSTI Composite Index is comprised of the universe of technology stocks and all securities that meet the previously established inclusion criteria are added to the Index at the time of semi-annual rebalancing. CBOE maintains the GSTI Composite Index.

[9] For example, if CBOE provides to the Committee a list of composition changes to the GSTI Composite Index after the close of trading on Friday, the Committee would in turn inform CBOE of any corresponding changes to the GSTI Sub-Indexes before trading commences on Monday. CBOE would then disseminate such changes to the public at least five business days prior to the effective date, wherever possible. Telephone Conversation between Eileen Smith, CBOE, and Steve Youhn, SEC, on July 24, 1996.

[10] *See* Amendment No. 1.

[11] Currently, the Sub-Indexes range from 9 to 45 components.

[12] *See* Amendment No. 1.

[13] The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's (''OCC'') by-laws, OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, OCC has the authority to fix an exercise settlement amount

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The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable. Except as modified herein, the Rules in Chapter XXIV will be applicable to GSTI Sub-Index options. Index option contracts based on the GSTI Sub-Indexes will be subject to the position limit requirements of Rule 24.4A.[14] Ten reduced-value options will equal one full-value contract for such purposes.

CBOE represents that it has the necessary systems capacity to support new series that would result from the introduction of the GSTI Sub-Index options. CBOE has also been informed that the Options Price Reporting Authority (''OPRA'') has the capacity to support such new series.

II. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, particular, the requirements of Section 6(b)(5).[15] Specifically, the Commission finds that the trading of options on the GSTI Sub-Indexes, including LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with additional means to hedge exposure to market risk associated with stocks in the various high technology sub-sectors.[16]

The trading of options on the GSTI Sub-Indexes and on reduced-value Indexes, however, raises several issues relating to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that CBOE adequately has addressed these issues.

A. Index Design and Structure

The Commission believes it is appropriate for the Exchange to designate the Sub-Indexes as narrow-based for purposes of index options trading. The Sub-Indexes are comprised of a smaller number of stocks from the GSTI Composite Index and are intended to trade specific sub-industries of the high capitalization technology sector of the equities market. Accordingly, the Commission believes it is appropriate for CBOE to apply its rules governing narrow-based index options to trading in the GSTI Sub-Index options.[17]

The Commission believes that the large capitalizations, liquid markets, and relative weightings of the component stocks for each Sub-Index significantly minimizes the potential for manipulation of the Sub-Index. As discussed above, each of the Sub-Indexes must be composed only of components of the GSTI Composite Index. Accordingly, the inclusion standards applicable to the GSTI Composite Index will apply to each of the Sub-Indexes.[18]

In this regard, the Commission notes that the market capitalizations of the stocks in the Sub-Indexes are very large, ranging from a high of $67 billion to a low of $636 million. Because the Sub-Indexes are modified capitalization-weighted, as described above, no one stock or group of stocks dominates a particular Sub-Index.

Second, the proposed maintenance criteria will serve to ensure that: (A) the Sub-Indexes are not dominated by one or several securities that do not satisfy the Exchange's options listing criteria; (B) the Sub-Indexes remain composed substantially of liquid highly capitalized securities. Specifically, all components must have a minimum market capitalization of $75 million and be options eligible; (C) the Sub-Indexes remain composed of actively traded securities. Specifically, the Commission notes that no more than 10% of the capitalization of a Sub-Index may be represented by stocks with average daily volume for the previous six-month period of less than 20,000 shares; and (D) the Sub-Indexes are comprised of no less than six components at all times.[19] In the event a Sub-Index fails to comply with these criteria, CBOE will notify Commission staff to determine the appropriate regulatory response. Such responses could include, but are not limited to, the removal of components from a Sub-Index, prohibiting opening transactions, or discontinuing the listing of new series in any Sub-Index.

Third, CBOE and the Committee will be required to ensure that each component of a Sub-Index is subject to last sale reporting requirements in the U.S. pursuant to Rule 11Aa3–1 of the Act. This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks, will help deter as well as detect any illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Sub-Index options (including full-value and reduced-value long-term Index options), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Sub-Index options will be subject to the same regulatory regime as the other standardized index options currently traded on CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Sub-Index options and LEAPS.

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whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. *See* Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (Aug. 16, 1996) (order approving SR-OCC–95–19).

[14] CBOE Rule 24.4A sets position and exercise limits for narrow-based index options under a tiering approach based on the applicable concentration of the component securities. Each of the Sub-Indexes is subject to a position limit of 9,000 contracts on the same side of the market.

[15] U.S.C. §78f(b)(5) (1988).

[16] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Sub-Indexes will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the high technology sub-industries in the U.S. stock markets.

[17] The Commission also believes that each of the reduced value Sub-Indexes are narrow-based because they are composed of the same component securities as the Sub-Indexes, and merely dividing a Sub-Index value by ten will not alter its basic character.

[18] *See supra* note 6 for the inclusion standards. In approving the GSTI Composite Index (SR–CBOE–96–43), the Commission makes a concurrent finding that the GSTI Composite Index is broad-based because it represents a substantial segment of the U.S. equities market. In addition, the Commission finds that the general broad diversification, capitalization, and relatively liquid markets of the GSTI Composite Index's component stocks significantly minimize the potential for manipulation of that Index.

[19] *See supra* note 11.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[20] In this regard, CBOE, Amex, NYSE, and the NASD, on whose markets the component securities of the Sub-Indexes trade, are all members of the Intermarket Surveillance Group (''ISG'').[21] Options on the individual component securities also trade on markets which are ISG members. In addition, CBOE will apply the same surveillance procedures as those used for existing narrow-based index options trading on CBOE.

The Commission notes that certain concerns are raised when a broker-dealer, such as Goldman, Sachs, is involved in the development and maintenance of a stock index that underlies an exchange-traded derivative product. For several reasons, however, the Commission believes that CBOE has adequately addressed this concern with respect to options on the Sub-Indexes.

First, the value of the Sub-Indexes, including the final settlement values, are to be calculated and disseminated independent of Goldman, Sachs by CBOE. Accordingly, neither Goldman, Sachs nor any of its affiliates or other persons (except CBOE) will be in receipt of the values prior to their public dissemination. Second, the Commission believes that the procedures Goldman, Sachs has established to detect and prevent material non-public information concerning the Sub-Indexes from being improperly used by members of the Committee, as well as other persons within Goldman, Sachs, as discussed above, adequately serve to minimize the susceptibility to manipulation of the Sub-Indexes and the securities in the Sub-Indexes. Finally, the Exchange's existing surveillance procedures for stock index options will apply to the options on the Sub-Indexes and should provide CBOE with adequate information to detect and deter trading abuses that may occur. In summary, the Commission believes that the procedures outlined above help to ensure that Goldman, Sachs will not have any informational advantages concerning modifications to the composition of the Sub-Indexes due to its role in the maintenance of the Sub-Indexes.

D. Market Impact

The Commission believes that the listing and trading of options on the Sub-Indexes, including LEAPS, on CBOE will not adversely impact the underlying securities markets.[22] First, as described above, due to the modified capitalization weighting method, no one stock or group of stocks dominates a Sub-Index. Second, because at each semi-annual rebalancing of a Sub-Index, at least 75% of the weight of the Sub-Indexes must be accounted for by stocks that meet CBOE's options listing standards, the component stocks generally will be actively-traded, highly-capitalized stocks.[23] Third, CBOE's existing position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because Sub-Index options and Sub-Index LEAPS will be issued and guaranteed by the OCC just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring GSTI Sub-Index options, including LEAPS, based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for stocks underlying options on the Index.[24]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 establishes maintenance criteria for the Sub-Indexes which should help to ensure that the Sub-Indexes do not become dominated by lowly capitalized, illiquid, and thinly traded securities. In addition, the Commission believes that the establishment of maintenance criteria should help to increase the integrity and stability of the Sub-Indexes. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–44 and should be submitted by October 16, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–CBOE–96–44) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24493 Filed 9–24–96; 8:45 am]

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[20] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[21] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, dated July 14, 1983, amended January 29, 1990. The members of the ISG are the following: American Stock Exchange; Boston Stock Exchange, Inc.; CBOE; Chicago Stock Exchange, Inc.; National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc.; Pacific Stock Exchange Inc.; and Philadelphia Stock Exchange, Inc. The major stock index futures exchanges (including the Chicago Merchantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[22] In addition, CBOE has represented that it and OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Sub-Index options and LEAPS.

[23] *See* Amendment No. 1.

[24] Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[25] 15 U.S.C. § 78s(b)(2) (1988).

[26] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–37693; File No. SR–CBOE–96–43]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, No. 2 and No. 3 Thereto Relating to the Listing and Trading of Options on the Goldman Sachs Technology Composite Index

September 17, 1996.

On July 2, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading on the Exchange of options on the Goldman Sachs Technology Composite Index (''GSTI Composite Index'' or ''Index''), a cash-settled, broad-based index designed to measure the performance of high capitalization technology stocks. Notice of the proposed rule change was published for comment and appeared in the Federal Register on August 9, 1996.[3] No comments were received on the proposal. On August 13, 1996, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On September 10, 1996, CBOE submitted Amendment No. 2 to the proposed rule change.[5] On September 16, 1996, CBOE submitted Amendment No. 3 to the proposed rule change [6] (together with Amendments No. 1 and No. 2, the ''Amendments''). This order approves the proposal, as amended, and solicits comments on Amendment No. 1, Amendment No. 2, and Amendment No. 3.

I. Description of the Proposal

A. Composition of the Index

The GSTI Composite Index has been designed to measure the performance of the universe of high capitalization technology stocks.[7] The GSTI Composite Index is a capitalization-weighted index with each stock affecting the Index in proportion to its market capitalization. All securities that meet the following criteria (the ''GSTI Index Rules'') will automatically be included in the Index, either at the time of the semiannual rebalancing or when the ''fast-add'' criteria, as defined below, are met.[8]

First, the company's stock must trade on the New York Stock Exchange, the American Stock Exchange or through the facilities of the Nasdaq, and be ''reported securities'' under Rule 11Aa3–1. Only outstanding common shares are eligible for inclusion. Additionally, only foreign companies whose primary market is in the United States will be eligible for the Index,[9] American Depositary Receipts are not eligible. Second, the total market capitalization of the company's stock must be equal to or greater than the capitalization ''cutoff'' value. The initial base period ''cutoff'' value will be $600 million, but this value will be adjusted on each semiannual rebalancing date (as described below) to reflect the price performance of the Index since the base period and rounded up to the nearest $50 million. Third, company stocks with a public float below 20% of shares issued and outstanding are not eligible for inclusion in the Index.[10] Fourth, the company stock must have annualized share turnover of 30% or more, based on its average daily share volume for the six calendar months prior to inclusion in the Index. Fifth, the components must be from a delineated group of Standard Industrial Classification codes or Russell Industry codes.[11] Sixth, at least 75% of the weight of the Index must be options eligible pursuant to CBOE Rule 5.3.[12]

As of April 30, 1996, the Index was comprised of 177 stocks ranging in capitalization from $604 million to $67.3 billion. The largest stock accounted for 8.5% of the total weighting of the Index, while the smallest accounted for 0.08%. The median capitalization of the firms in the Index was $1.5 billion.

B. Calculation

The methodology used to calculate the value of the Index is similar to the methodology used to calculate the value of other well-known broad-based indices. The level of the Index reflects the total market value of all the component stocks relative to a particular base period. The GSTI Composite Index base date is April 30, 1996, when the Index value was set to 100. The daily calculation of the GSTI Composite Index is computed by dividing the total market value of the components in the Index by the Index Divisor. The divisor is adjusted as needed to ensure continuity in the Index whenever there are additions and deletions from the Index, share changes, or adjustments to a component's price to reflect offerings, spinoffs, or extraordinary cash dividends. The values of the Index will be calculated by CBOE on a real-time basis, and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority (''OPRA'').[13]

C. Maintenance

The GSTI Composite Index will be maintained by the Exchange. Index maintenance includes monitoring Index criteria and completing the adjustments for company additions and deletions, share changes, stock splits, stock dividends, and stock price adjustments due to such events as company restructurings or spinoffs, as well as the semiannual rebalancing. Any changes CBOE makes to the Index must be in

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR § 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37519 (August 2, 1996), 61 FR 41671.

[4] *See* letter from Eileen Smith, Director, Product Development, CBOE to Stephen Youhn, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated August 13, 1996. Amendment No. 1 primarily addresses issues related to Index maintenance criteria.

[5] *See* letter from Eileen Smith, CBOE to Stephen Youhn, SEC, dated September 10, 1996. Amendment No. 2 institutes a minimum market capitalization requirement for Index components.

[6] *See* letter from Eileen Smith, CBOE to Stephen Youhn, SEC, dated September 16, 1996. Amendment No. 3 clarifies Amendments No. 1 and No. 2.

[7] A list of the securities comprising the GSTI Composite Index, as well as listed shares outstanding and prices as of April 30, 1996, was submitted by the Exchange as Exhibit B, and is available at the Office of the Secretary, CBOE and at the Commission.

[8] Amendment No. 1. All the securities to be added to or deleted from the Index, whether at the semi-annual rebalancing or by ''fast-add'' or ''fast-delete,'' will be identified and selected solely by the CBOE staff. The GSTI Committee, which is responsible for maintaining the GSTI Sub-Indexes (as discussed in SR–CBOE–96–44), is not involved in any decisions on adding or deleting securities from the Composite Index. *Id.*

[9] Amendment No. 1.

[10] The public float is determined by dividing the number of shares which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Act by the total number of shares outstanding. With respect to options on underlying individual components, CBOE Rule 5.3, Interpretations and Policies .01(a)(1) requires a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Act. Telephone conversation with Eileen Smith, CBOE and Janice Mitnick, Attorney, Office of Market Supervision, Division of Market Regulation, SEC, on July 30, 1996.

[11] Amendment No. 1. Included in the delineated list are 14 categories under the SIC Code and 6 categories under the Russell Code.

[12] Amendment No. 3. As of April 30, 1996, 100% of the Index was options eligible. *See* note 25, *infra*, which discusses CBOE options eligibility standards.

[13] Telephone conversation between Eileen Smith, CBOE and Sharon Lawson, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, on September 17, 1996. The original filing proposed that the Sub-Index values be calculated by CBOE or a designee of Goldman Sachs.

compliance with the inclusion and maintenance criteria.

The Index will be rebalanced by CBOE for additions and deletions on a semiannual basis. Stocks will be added or deleted from the Index at the semiannual rebalancing in accordance with CBOE's application of the GSTI Index Rules,[14] as well as compliance with the market capitalization cut-off value, component options eligibility percentages, trading volume requirements and weighting limitations noted below. In particular, Index constituents with capitalization below 50% of the ''cutoff'' value on a semiannual rebalancing date shall be removed after the close on the effective date of the rebalancing. Further, at the semiannual rebalancing, CBOE will consult with the Commission staff if any component's market capitalization drops below $75 million at the time of the semiannual rebalancing and that component is not options eligible,[15] less than 75% of the capitalization of the Index is represented by stocks eligible for options trading,[16] and/or 10% or more of the weight of the Index is composed of stocks with average daily volume for the previous six-month period of less than 20,000 shares.[17] If any of these situations occur, the CBOE will discuss with Commission staff what action should be taken, including whether the Index should be reclassified as narrow-based, opening transactions should be prohibited and/or new Index series should not continue to be listed. Additionally, CBOE will notify Commission staff if the largest component of the Index is greater than 15% of the weight of the Index, or the top five components are greater than 50% of the weight of the Index.[18]

At the rebalancing, Index share changes will be made to reflect the outstanding shares and closing prices of all Index constituents on the ''rebalancing'' date. The changes will be implemented after the close on the ''effective'' date. The effective dates shall be the third Friday of January and July. The rebalancing date shall be seven (7) business days inclusive prior to the effective date. Notice of the new component list will be disseminated by the Exchange to the public at least five trading days before the effective date, unless unforeseen circumstances require a shorter period.

Stocks may be added or deleted from the Index at a time other than at the rebalancing according to the ''Fast Add and Delete'' rule. All Index constituent changes made in accordance with this rule will be announced by the Exchange at least three to five trading days prior to the effective date of the Fast Add or Delete, unless unforeseen circumstances require a shorter period.

Any technology-related company whose shares start trading between semiannual rebalancings is eligible to be Fast Added to the Index if all the inclusion criteria described above are met, excluding the requirement for minimum share turnover ratio.[19] Further, the stock must rank in the top quartile of market capitalization of the GSTI Composite Index based on the previous month-end closing prices.

If two companies in the Index merge, or if an Index constituent merges with a company not currently in the Index, the merged company shall remain in the Index if it meets all the Index inclusion criteria. If the company to be merged into another company (''target company'') is currently in the Index, it will be Fast Deleted after the close on the date the merger is completed.

If a GSTI Composite Index constituent is acquired by a non-Index company, the acquiring company may be added to the Index if it meets the inclusion criteria; otherwise, the target company will be Fast Deleted. Any such additions or deletions will be effective after the close on the date the acquisition is completed.

If a company in the Index spins off another company, the parent and the spinoff will remain in the Index provided that each meets the Index inclusion criteria. If either the parent or the spinoff fails to meet the inclusion criteria, it will be removed from the Index.

In the event that a company represented in the Index files for bankruptcy, its stock will be removed from the Index effective after the close on the date of the filing. In the event that trading in an Index constituent is suspended for thirty (30) trading days, CBOE will remove the company from the Index unless an announcement has been made that the stock will commence trading within the next ten days.[20] Any such removal will be preannounced and, for purposes of minimizing impact to be Index, the stock to be removed will be removed at the value at which it last traded.

Except for stocks which meet the criteria for Fast Add or Delete (as described above), stocks can only be added or deleted by CBOE from the Index at the time of the semiannual rebalancing.

D. Index Option Trading

In addition to regular Index options, the Exchange may provide for the listing of long-term index option series (''LEAPS®'') and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the Index level. The current and closing Index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

Strike prices will be set to bracket the Index in a minimum of 2½ point increments for strikes below 200 and in 5 point increments above 200. The minimum tick size for series trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be 1/18th. The trading hours for options on the Index will be from 8:30 a.m. to 3:10 p.m. Chicago time.

E. Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:10 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated based on the opening prices of the component securities on the business day prior to expiration. If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the Index, as is done for currently listed indexes.[21] When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the

[14] The GSTI Index is based on pre-determined criteria (the GSTI Index Rules) which have been publicly disseminated. *See* Section I(A), *supra.*

[15] Amendment No. 3.

[16] Amendment No. 3.

[17] Amendment No. 3.

[18] Amendment No. 1. After notification of Commission staff, CBOE will monitor the Index for the following three month period. At the end of that time period, CBOE, in conjunction with Commission staff, will determine if the Index should be reclassified as narrow-based.

[19] As noted above, CBOE will ensure 75% of the Index is options eligible at each semiannual rebalancing. These standards contain minimum trade volume requirements. *See* note 25, *infra.*

[20] Amendment No. 1.

[21] The Commission notes, however, that pursuant to Article XVII, Section 4 of OCC's by-laws, OCC is empowered to fix an exercise settlement amount in the event that OCC determines that the current index value is unreported or otherwise unavailable. Further, OCC has authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.,* the value used for exercise settlement purposes) ordinarily would be determined. *See* Securities Exchange Act Release No. 37315 (June 17, 1996, 61 FR 42671 (August 16, 1996) (order approving SR–OCC–95–19).

Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

F. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options of monitor trading in Index options and Index LEAPS on the GSTI Composite Index.

G. Position Limits

The Exchange proposes to establish position limits for options on the Index at 100,000 contracts on either side of the market, with no more than 60,000 of such contracts permitted to be in the series in the nearest expiration month. These limits are roughly equivalent, in dollar terms, to the limits applicable to options on other similar indices.

H. Exchange Rules Applicable and Systems Capacity.

As modified herein, the Rules in Chapter XXIV will be applicable to the trading of GSTI Composite Index options.

CBOE has stated that it has the necessary systems capacity to support new series that would result from the introduction of GSTI Composite Index options. CBOE has also been informed that the OPRA has the capacity to support new series.[22]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[23] The Commission finds that the trading of options on the Index will permit investors to participate in the price movement of the securities on which the Index is based. The Commission also believes that the trading of options on the Index is allow investors holding positions in some of all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes GSTI Composite Index options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of the securities contained in the Index. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of options on the GSTI Composite Index will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[24]

The trading of Goldman Sachs Technology Composite Index options, however, raised several issues, including issues related to index design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the CBEO has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and therefore to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the U.S. equities market, in general, and high capitalization technology securities, in particular. First, the high technology sector is a substantial segment of the U.S. equities market, the GSTI Index Rules ensure that the Index continues to reflect that segment. Second, the Index includes multiple industries within the high technology segment of the securities market, such as computer and office equipment, industry machinery, radio and television broadcasting and communications equipment, and telephone and telegraph apparatus, and does not rely solely on computer-related companies. Third, the Index consists of 177 actively traded securities (all options eligible as of April 30, 1996[25]), all of which trade on the New York Stock Exchange, the American Stock Exchange or through the facilities of the Nasdaq. Fourth, the market capitalization of the stocks comprising the Index is very large. Specifically, the total capitalization of the Index as of April 30, 1996 was approximately $791.7 billion. Market capitalization of the individual stocks ranges from $604 million to $67.3 billion, with an average capitalization of $4.47 billion. Fifth, no stock or group of stocks dominates the weight of the Index. Specifically, no single stock accounted for more than 8.5% of the total weighting of the Index, and the five highest weighted securities accounted for only 35% of the Index value.[26] Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

The Commission also believes that the general broad diversification, capitalization, and relatively liquid markets of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestically traded high capitalization technology stocks, with no single industry group or stock dominating the Index. Second, the majority of the stocks that comprise the Index are actively traded.[27] Third, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index will not be dominated by low priced stocks with small capitalizations, floats and trading volumes.[28] Fourth, the CBOE has represented that it will monitor the Index semiannually and will consult with staff of the Commission when: (A)

[22] *See memo from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, Director of Product Research, CBOE, dated June 26, 1996 (confirming that the traffic generated is within the OPRA's capacity).*

[23] 15 U.S.C. § 78f(b)(5).

[24] Pursuant to section 6(b)95) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the GSTI Index will provide investors with a hedging vehicle that should reflect the overall movement of the universe of highly capitalized technology stocks primarily traded on U.S. markets.

[25] The standards for options eligibility, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3, Interpretation .01.

[26] Amendment No. 1. If the largest component of the Index is greater than 15% of the weight of the Index, or the top five components are greater than 50% of the weight of the Index, CBOE will notify Commission staff. After notification of Commission staff, CBOE will monitor the Index for the following three month period. At the end of that time period, CBOE, in conjunction with Commission staff, will determine if the Index should be reclassified as narrow-based. This standard regarding the weight of Index components should ensure that if the Index becomes dominated by one or a few securities, the Commission and CBOE will re-review the Index's broad-based status.

[27] As stated above, in order to qualify for inclusion in the Index, a company must have annualized share turnover of 30% or more based on its average daily share volume for the six calendar months prior to inclusion into the Index.

[28] In this regard, the Commission notes that the GSTI Composite Index is comprised of the universe of technology stocks that meet the GSTI Index Rules criteria. There are no subjective criteria in determining the components of the Index. *See* Amendment No. 1.

less than 75% of the weight of the Index is options eligible [29] (B) 10% or more of the weight of the Index is composed of stocks with average daily volume of less than 20,000 shares for the previous six month period; [30] (C) the market capitalization of any component falls below $75 million at a time the component is not options eligible; [31] or (D) the largest component of the Index is greater than 15% of the weight of the Index, or the top five components are greater than 50% of the weight of the Index [32]. In the event the Index fails to satisfy any of the criteria in A, B and C above, CBOE will consult with the Commission to determine the appropriate regulatory response, including but not limited to the reclassification of the Index as narrow-based, prohibiting opening transactions and/or discontinuing the listing of new series of Index options.[33] As noted above, as to component weight, CBOE will monitor the Index for a three month period and, in conjunction with Commission staff, will determine whether the Index should be reclassified as narrow-based.[34]

Fifth, the Exchange has proposed reasonable position and exercise limits for the Index options that will serve to minimize potential manipulation and other market impact concerns. The position limits, at 100,000 contracts on either side of the market, with no more than 60,000 of such contracts permitted to be in the series in the nearest expiration month, are roughly equivalent in dollar terms to the limits applicable to options on other similar indices. Accordingly, the Commission believes these factors minimize the potential for manipulation because it is unlikely that attempted manipulations of the prices of the Index components would affect significantly the Index's value. Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulation and other trading abuses.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options traded on the CBOE, the commission believes that adequate safeguards are in place to ensure the protection of investors in Index options.

C. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[35] In this regard, the New York Stock Exchange, Inc., American Stock Exchange, Inc. and the National Association of Securities Dealers, Inc., on whose markets the component securities of the Index trade, are all members of the Intermarket Surveillance Group (''ISG'').[36]

Options on the individual component securities also trade on markets which are ISB members. In addition, the CBOE will apply the same surveillance procedures as those used for existing broad based index, options trading on the CBOE.

D. Market Impact

The Commission believes that the listing and trading of GSTI Composite Index options on the CBOE will not adversely affect the underlying securities markets.[37] First, as described above, the Index is broad-based and comprised of 177 stocks. No one stock or industry group dominates the Index and the maintenance standards will help to ensure this continues even if some of the Index components change.[38] Second, as noted above, the stocks contained in the Index have large capitalizations and are actively traded. Should 10% or more of the weight of the Index be composed of stocks with an average daily volume of less than 20,000 for the previous six months, CBOE will consult with Commission staff.[39]

Third, as of April 30, 1996, all stocks comprising the Index were options eligible[40] and the maintenance standards ensure that, at least, 75% of the weight of the Index will continue to be eligible for options trading.[41] Fourth, existing CBOE stock index options rules and surveillance procedures will apply to Index options. Fifth, the position limits of 100,000 contracts on either side of the market, with no more than 60,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Sixth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Finally, the Commission believes that settling expiring GSTI Composite Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.[42]

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[29] Amendment No. 3.

[30] Amendment No. 3.

[31] Amendment No. 3.

[32] Amendment No. 1.

[33] Amendment No. 3.

[34] Amendment No. 1.

[35] *See* Securities Exchange Act Release No. 31243 (October 5, 1992), 57 FR 45849.

[36] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, dated July 14, 1983, amended January 29, 1990. The members of the ISG are the following: American Stock Exchange; Boston Stock Exchange, Inc.; CBOE; Chicago Stock Exchange, Inc.; National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc.; Pacific Stock Exchange Inc.; and Philadelphia Stock Exchange, Inc. The major stock index futures exchanges (including the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[37] The CBOE has stated that it has the necessary systems capacity to support new series that would result from the introduction of the GSTI Index options. As stated above, OPRA has represented that additional traffic generated by options and LEAPS on the Index is within OPRA's capacity. *See* note 22, *supra.*

[38] *See* note 18, *supra*, and accompanying text.

[39] Amendment No. 3. CBOE's consultation with Commission staff will address whether the Index should be reclassified as narrow-based, whether opening transactions should be prohibited and whether listing of new series should be discontinued if the Index does not meet the market value criteria. *Id.*

[40] Telephone conversation with Eileen Smith, CBOE and Janice Mitnick, SEC, on July 30, 1996.

[41] *See* notes 16–18, *supra*, and accompanying text.

[42] Securities Exchange Act Release No. 30944 (July 28, 1992), 57 FR 33376.

The Commission finds good cause for approving the Amendments prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, the Amendments clarify issues related to foreign securities, public float and suspension of trading of component securities. In addition, the Amendments establish maintenance criteria and provide that the CBOE will monitor the Index, and will notify Commission staff in the event that certain Index component levels fall below these designated thresholds. The Commission believes that these monitoring provisions ensure that the Index continues to be comprised of highly capitalized, actively traded securities. In addition, the maintenance criteria will ensure that the Index does not become dominated by one or a few securities. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to find that good cause exists to approve the Amendments to the proposal on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Amendments. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–43 and should be submitted by October 16, 1996.

IV. Conclusion

For the reasons discussed above, the Commission finds that the amended proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[43] that the proposed rule change (SR–CBOE–96–43), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

[FR Doc. 96–24494 Filed 9–24–96; 8:45 am]

BILLING CODE 8010–01–M

[43] 15 U.S.C. § 78s(b)(2).

[44] 17 CFR § 200.30–3(a)(12).

[Release No. 34–37695; File No. SR–PSE–96–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Pacific Stock Exchange, Inc., Relating to Firm Quotes, Automatic Executions and Orders That May Be Placed in the Options Public Limit Order Book

September 17, 1996.

On June 14, 1996, the Pacific Exchange, Inc. (''PSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its rules on firm quotes,[3] automatic executions and orders that may be placed in the Options Public Limit Order Book (''Book'') in order to clarify the scope of these rules. The Exchange also proposed to modify its Minor Rule Plan and Recommended Fine Scheduled relating to violations of these rules. On June 26, 1996, the Exchange filed Amendment No. 1 to the proposal.[4] Notice of the proposed rule change and Amendment No. 1 was published for comment and appeared in the Federal Register on July 19, 1996.[5] No comment letters were received on the proposal. On August 28, 1996, the PSE filed Amendment No. 2 to the proposed rule change.[6] This order approves the PSE proposal as amended.

I. Description of the Proposal

The Exchange is proposing to amend PSE Rule 6.87 to provide that only non-broker-dealer customer orders are eligible for execution on the Exchange's Automatic Execution System (''Auto-Ex''). This change codifies a long-standing policy of the Exchange to that effect.

The Exchange is also proposing to amend PSE Rule 6.52(a). Rule 6.52(a) currently provides that no member shall place, or permit to be placed, an order with an Order Book Official for an account in which such member or his organization, any other member or member organization, or any non-member broker-dealer has an interest. The Exchange is proposing to replace that provision with one stating that only non-broker-dealer customer orders may be placed with an Order Book Official pursuant to Rule 6.52(a).

The Exchange is also proposing to amend its Minor Rule Plan so that it includes the following rule violation: ''Entry of broker/dealer order for execution on Auto-Ex system. (Rule 6.87(a)).'' The Exchange believes that violations of Rule 6.87(a) are easily verifiable and, therefore, are appropriate for inclusion in the Minor Rule Plan.

The Exchange is also proposing to modify its Recommended Fine Schedule under the Minor Rule plan as follows: First, the current recommended fine for a member who fails to honor a guaranteed market as required by Rule 6.86(a) is $250 for a first violation, $500 for a second violation and $750 for a third violation. The Exchange is proposing to increase these fines to $500, $1,500 and $3,000 for a first, second or third-time violation, respectively.[7]

Second, the recommended fine for a member who fails to identify an order as for a broker-dealer is currently $250 for a first violation, $500 for a second violation and $750 for a third violation. The Exchange is proposing to raise these fines to $500, $1,500 and $3,000 for first, second and third-time violations, respectively.

Third, the Exchange is proposing to establish fines of $500, $1,500 and $300

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As a result of Amendment No. 2, no changes are proposed to PSE's firm quote rule (Rule 6.86). The Recommended Fine Schedule pursuant to Rule 10.13, however, is proposed to be revised for violations of Rule 6.86. *See* note 6, *infra.*

[4] In Amendment No. 1, the Exchange corrects a technical error in the number of items in the Minor Rule Plan (PSE Rule 10.13) and Recommended Fine Schedule. *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to James T. McHale, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated June 26, 1996 (''Amendment No. 1'').

[5] *See* Securities Exchange Act Release No. 37434 (July 12, 1996), 61 FR 37785 (July 19, 1996).

[6] In Amendment No. 2 the Exchange withdraws that portion of the filing which would have defined ''broker-dealer'' to include ''foreign broker-dealers'' for purposes of Rule 6.86 and 6.87. The Exchange also included a technical amendment to Rule 10.13 (''Minor Rule Plan'') and the Recommended Fine Schedule pursuant thereto. *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to James T. McHale, Attorney, OMS, Division, Commission, dated August 27, 1996 (''Amendment No. 2'').

[7] Fines for multiple violations of Options Floor Decorum and Minor Trading Rules are calculated on a running two-year basis. For a discussion of the Exchange's Recommended Fine Schedule, *see* Securities Exchange Act Release No. 34322 (July 6, 1994), 50 FR 35958 (July 14, 1994).

for first, second and third-time violations of the restriction against entering broker-dealer orders for execution on the Auto-Ex system.

II. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(6)[8] in that they are designed to facilitate transactions in securities, promote just and equitable principles of trade, protect investors and the public interest, and provide for the appropriate disciplining of the PSE's members. Specifically, the Commission finds that limiting execution of options orders through Auto-Ex to non-broker-dealer customers is appropriate and consistent with the Act. Automatic execution systems such as Auto-Ex were developed, in part, to aid public customers by providing nearly instantaneous execution of small orders at a guaranteed price.[9] The rule change codifies PSE's existing policy regarding those market participants that may utilize Auto-Ex and is consistent with the policies of several of the other optional markets, which currently limit the availability of their respective automatic execution systems to non-broker-dealer customer orders.[10]

With regard to the change to Rule 6.52(a) the Commission finds that this is also consistent with the Act. The Exchange has represented that the change is merely to conform the language in Rule 6.52(a) with that of Rule 6.86(a) and proposed Rule 6.87(a). The Commission finds that the change in the language of the rule makes no substantive change with regard to the determination of those orders that may be placed with an Order Book Official, and should help to avoid confusion concerning the applicability of the Rule.

Additionally, the Commission believes that including violations of Rule 6.87(a) in the Exchange's Minor Rule Plan (''MRP'') is consistent with the Act. The Commission has previously found that the Exchange's MRP provides fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant a sanction more severe than a warning or cautionary letter, but for which a full disciplinary proceeding would be unsuitable because such a proceeding would be costly and time-consuming in view of the minor nature of the violation.[11] The Commission believes that violations of Rule 6.87(a) are objective and easily verifiable, thereby lending themselves to the use of expedited proceedings.

Specifically, the entering of a broker-dealer order on Auto-Ex may be determined objectively and adjudicated quickly without complicated factual and interpretive inquiries.[12]

Finally, the Commission believes that the proposed changes to the Recommended Fine Schedule are consistent with the Act. The fine level increases will enhance the Exchange's ability to enforce compliance with its rules through the appropriate discipline of members and member organizations in a manner that is proportionate to the minor nature of such violations. Further, the Exchange has represented that its membership will be informed of the amended Recommended Fine Schedule via a Rule Adoption Notice.[13]

The Commission finds good cause for approving Amendment No. 2 to the proposal prior to the thirtieth day after the date of publication of the notices of filing thereof in the Federal Register. Specifically, Amendment No. 2 withdraws that portion of the filing which would have defined ''broker-dealer'' to include ''foreign broker-dealers'' for purposes of Rules 6.86 and 6.87. The term ''foreign broker-dealers'' was not defined in the original proposal. Deletion of the term is therefore appropriate, absent objective standards necessary to ensure the fair enforcement of the affected rules. Therefore, by eliminating a potential ambiguity in the Rules 6.86 and 6.87, Amendment No. 2 strengthens the proposal. The other change made by Amendment No. 2 is technical and non-substantive in nature. Based on the above, the Commission finds good cause for approving Amendment No. 2 to the proposed rule change on an accelerated basis and believes that the proposal, as amended, is consistent with Sections 6(b)(5), 6(b)(6), and 19(b)(2)[14] of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the File No. SR–PSE–96–19 and should be submitted by October 16, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–PSE–96–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[8] 15 U.S.C. 78f(b) (5) and (6).

[9] *See* Securities Exchange Act Release No. 25995 (August 15, 1988), 53 FR 31781 (August 19, 1988) (order approving changes to the Chicago Board Options Exchange's (''CBOE'') Retail Automatic Execution System).

[10] *See e.g.* CBOE Rule 6.8, and Securities Exchange Act Release No. 37429 (July 12, 1986) (order approving proposed rule change by the American Stock Exchange, Inc. relating to ''unbundling'' of Auto-Ex orders).

[11] *See* Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491 (July 1, 1993).

[12] If the Exchange determines that a violation of Rule 6.87(a) is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with PSE Rule 10.3. Indeed, the Commission fully expects the PSE to bring full disciplinary proceedings in appropriate cases.

[13] Telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, and James T. McHale, Attorney, OMS, Division, Commission, on September 5, 1996.

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[Release No. 34–37694; File No. SR-Phlx–95–19]

Self-Regulatory Organizations; Notice of Filing of Amendments No. 2, 3, and 4 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of DIVS, OWLS and RISKS

September 17, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 8, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III

below, which Items have been prepared by the self-regulatory organization. On July 12, 1996, Phlx submitted Amendment No. 1 (''Amendment No. 1'') to the proposal to address various issues.[1] Notice of the proposal and Amendment No. 1 appeared in the Federal Register on August 28, 1995.[2] No comments were received on the proposal. On May 30, August 22, and September 9, 1996, Phlx submitted Amendments No. 2, 3, and 4 to the proposal, respectively, to address, among other things, issues related to spread margin and position limits.[3] The commission is publishing this notice to solicit comments on the Amendments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its limiting standards applicable to the trading of DIVS, OWLS and RISKS (''DIVS, OWLS and RISKS'' or ''DORs''). The text of the Amendments are available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Phlx proposes to amend its DORs filing in the following respects:

1. *Contract Size:* Phlx originally proposed that one DIVS, OWLS or RISKS contract represent an interest in one share of the underlying security. In order to prevent rounding problems that may occur at settlement, the Exchange proposes to have the DIVS, OWLS and RISKS each represent 100 shares of the underlying security. For example, a purchaser of one DIVS contract would own the right to receive substitute payments in the same amount as the regular dividends declared and paid on 100 shares of the underlying common stock.

2. *Position Limits:* The Exchange originally proposed to adopt a position limit of 1 million each of DIVS, OWLS and RISKS and would not have required aggregation with options positions pursuant to new Rule 1001D. In Amendment No. 2, the Exchange proposed that the greater of a holder's OWLS or RISKS positions be aggregated with option positions on the underlying security and have the same position limit as that set for the options on the underlying security. In Amendment No. 3, Phlx now proposes to aggregate all positions in OWLS and RISKS with put and call options on the same side of the market on the same underlying security.

According to Phlx, since an OWLS or RISKS position to the holder is a bullish position, the Exchange proposes that long OWLS and RISKS be aggregated with long call and short put positions in the related class of equity options. Similarly, since the Exchange believes that OWLS and RISKS, from the position of the seller is a bearish position, short OWLS and RISKS will be aggregated with short call and long put positions in the related class of equity options.

Because the DIVS positions only entitle holders to a substitute dividend stream and not actual control of the underlying stock, the Exchange proposes that the position limit for DIVS be equal to the position limit on the same class of options pursuant to Rule 1001, however, they would not be aggregated with positions in those options or with positions in OWLS and RISKS on that same underlying security. As an example, a customer could hold 25,000 XON DIVS in addition to a combined total of 25,000 OWLS, RISKS or equity options on XON on the same side of the market.

3. *Adjustments:* Phlx originally proposed a specific scheme for adjusting DIVS, OWLS and RISKS positions for stock splits, stock dividends, liquidating, special or partial liquidating dividends, spin-offs, mergers, rights offerings and tender offers. Phlx now proposes to withdraw those sections of the filing. Adjustments to the products for all corporate and other actions will be made in accordance with the rules of the Options Clearing Corporation (''OCC'').[4]

4. *Customer Margin*: Phlx originally proposed equity margin for all positions in DORS. In Amendment No. 1, Phlx proposed options margin requirements for RISKS positions and equity margin for positions in OWLS and DIVS. In addition, Phlx proposed the use of escrow receipts or letters of guarantee in lieu of margin. Finally, Amendment No. 1 also introduced the use of spread margin treatment for certain positions in DORs. In Amendment No. 2, Phlx proposed that boths OWLS and RISKS be margined as options (DIVS remain subject to equity margin). Accordingly, the full value of the purchase price of an OWLS or RISKS must be paid at the time of purchase. The minimum margin required for any short position would be 100% of the OWLS or RISKS current market price plus 20% of the market value of the OWLS or RISKS except that the maximum margin for a short OWLS position shall not exceed its termination claim. In Amendment No. 3, however, Phlx proposes two spread margin exceptions to this general rule.

First, under proposed Rule 1022D(C)(4)(A), if a customer has a short OWLS position and as long OWLS position which expires on or before the termination date of the short position, Phlx proposes to treat the positions exactly like an options spread. Accordingly, the margin requirement will be the lesser or the uncovered margin requirement or the amount, if any, by which the termination claim of the short position exceeds the termination claim of the long position. Similarly, pursuant to subparagraph (a)(B), the margin requirement for a short RISKS position and a long RISKS position which expires after the termination date of the short position would be the lesser of the uncovered margin requirement or the amount by which the termination claim of the long position exceeds the termination claim of the short position.[5]

Second, under Rule 1022D(c)(5)(A), Phlx proposes to treat covered OWLS or RISKS short positions similar to the method in which covered call positions are treated in Rule 722(c)(2)(F). Accordingly, if a customer holds a short OWLS or RISKS position and a long position in the underlying security or one exchangeable or convertible into the underlying security (excluding warrants), no margin will be required on the short position provided the long position is margined in accord with Rule 722 and the long position expires

[1] Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to; Sharon Lawson, SEC, dated June 30, 1996.

[2] Securities Exchange Act Release No. 36127 (Aug. 18, 1995), 60 FR 44533.

[3] Letters from Michele R. Weisbaum, Phlx, to: Sharon Lawson, SEC, dated May 30, 1996 (''Amendment No. 2'') and August 21, 1996 (''Amendment No. 3''); and Stephen Youhn, SEC, dated September 6, 1996 (''Amendment No. 4'' together with Amendments No. 2 and 3, ''Amendments''). In Amendment No. 3, Phlx responds to issues raised by the SEC's review of Amendment No. 2. Amendment No. 4 addresses strike price intervals for the products.

[4] *See* Amendment No. 2.

[5] *See* Amendment No. 3.

after the termination date of the short OWLS or RISKS position.[6]

Also under proposed Rule 1022D(c)(5), the margin requirement for a short OWLS or RISKS position which is covered by a long warrant convertible into an equivalent number of shares of the underlying security, will be the lesser of the uncovered margin requirement or the amount by which the conversion price of the long warrant exceeds the termination claim of the short OWLS or RISKS provided the right to convert the warrant does not expire on or before the termination date of the short OWLS or RISKS.[7]

Phlx believes the sum of the prices for an OWLS and RISKS position on the same underlying stock should approximate the price of the underlying stock (less the value of the DIVS component). Accordingly, Phlx proposes that a long stock position be sufficient cover for both a shows OWLS and a short RISKS position, provided the OWLS and RISKS have the same strike price and expiration date.

Phlx proposes that DIVS margin will be the same as it is for stock. The margin requirement will be 25% of the market value of all long positions plus 30% of the market value of each short position in a customer's account. Where a short DIVS position is covered by a long position in the underlying security or any other security immediately exchangeable or convertible (other than warrants) into the security, the margin on the short DIVSs position will be 10% of the market value of the long securities position.[8]

Finally, because OCC cannot yet facilitate escrow receipts or letters of guarantee for these products, Phlx proposes to withdraw all corresponding provisions as they relate to DORs.[9]

5. *Strike Price Intervals:* The Phlx proposes to amend proposed new Rule 1012D in order to address strike price intervals for DORs. Specially, Phlx proposes that DORs not be subject to the strike price interval, bid/ask differential and continuity rules respecting put and call options until the time to expiration is less than nine months. Phlx represents that this treatment is consistent with the rules for trading long-term equity and index options.[10]

The Exchange believes the proposed Amendments are consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that they are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principle of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed Amendments will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed Amendments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the Amendments. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–19 and should be submitted October 16, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–24492 Filed 9–24–96; 8:45 am]

BILLING CODE 8010–01–M

[6] *Id.*

[7] *Id.*

[8] *See* Amendment No. 1.

[9] *See* Amendment No. 3.

[10] *See* Amendment No. 4.

[11] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 3, 1996 [FR 61, page 34921–34922].

DATES: Comments must be submitted on or before October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0535.

Form Number: 9000–2.

Affected Public: Specified aviation employers.

Abstract: Federal Aviation Regulations require specified aviation employers to implement and conduct FAA-Approved anti-drug plans. They monitor program compliance, institute program improvements, and anticipate program problem areas. The FAA receives drug test reports from the aviation industry. More detailed and specific information is necessary to effectively manage the anti-drug program.

Estimated Annual Burden: The total annual burden is 35,369.5 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention OST Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 18, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–24476 Filed 9–24–96; 8:45 am]

BILLING CODE 4910–62–P

Application of Vision Air, Inc., for New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 96–9–29) Dockets OST–96–1185.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Vision Air, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property, and mail between a point or points in the United States, on the one hand, and London, through Stansted Airport, on the other hand.

DATES: Persons wishing to file objections should do so no later than October 4, 1996.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–96–1185 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2337.

Dated: September 19, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–24575 Filed 9–24–96; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

International Harmonization of Safety Standards; Calendar of Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of meetings.

SUMMARY: The NHTSA will continue its participation during this year in the international meetings to harmonize the United States and foreign motor vehicle safety standards. These meetings will be conducted by the Working Party on the Construction of Vehicles (WP29) under the Inland Transport Committee of the United Nations' Economic Commission for Europe (ECE), and by the six Meetings of Experts (formerly called Groups of Rapporteurs) of WP29. The NHTSA currently represents the United States in all of the Meetings of Experts except those on Pollution and Noise.

DATES: For a list of scheduled meetings, see the Supplementary Information section of this Notice. Inquiries or comments related to specific meetings are welcome but should be made at least two weeks preceding that meeting.

FOR FURTHER INFORMATION CONTACT: Francis J. Turpin, Office of International Harmonization (NOA–05), National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC. 20590 (202–366–2114).

SUPPLEMENTARY INFORMATION: This calendar consists of those ECE meetings currently scheduled. It is published for information and planning purposes and the meeting dates and places are subject to change. In fact, they are subject to confirmation by the Inland Transport Committee at its January 1997 meeting. NHTSA attendance at these meetings will be affected by agenda content, priorities and availability of travel funds.

January 13–15, 1997

Meeting of Experts on Pollution and Energy (GRPE), Thirty-Third—Geneva, Switzerland.

February 3–7, 1997

Meeting of Experts on Brakes and Running Gear (GRRF), Forty-First—Geneva, Switzerland.

February 24–27, 1997

Meeting of Experts on Noise (GRB), Twenty-Sixth Session—Geneva, Switzerland.

March 10, 1997

Administrative Committee for the Coordination of Work of WP29 (AC.2), Sixty-Third Session—Geneva, Switzerland.

March 11–14, 1997

Working Party on the Construction of Vehicles (WP–29), Hundred and Eleventh Session—Geneva, Switzerland.

March 24–28, 1997

Meeting of Experts on Lighting and Light-Signalling (GRE), Thirty-Eighth Session—Geneva, Switzerland.

April 7–11, 1997

Meeting of Experts on General Safety Provisions (GRSG), Seventy-Second Session—Geneva, Switzerland.

May 12–16, 1997

Meeting of Experts on Passive Safety (GRSP), Twenty-First Session—Geneva, Switzerland.

June 9–12, 1997

Meeting of Experts on Pollution and Energy (GRPE), Thirty-Fourth Session—Geneva, Switzerland.

June 23, 1997

Administrative Committee for the Coordination of Work of WP29 (AC.2), Sixty-Fourth Session—Geneva, Switzerland.

June 24–27, 1997

Working Party on the Construction of Vehicles (WP–29), Hundred and Twelfth Session—Geneva, Switzerland.

September 1–3, 1997

Meeting of Experts on Brakes and Running Gear (GRRF), Forty-Second Session—Geneva, Switzerland.

September 4–5, 1997

Meeting of Experts on Noise (GRB), Twenty-Seventh Session—Geneva, Switzerland.

October 6–10, 1997

Meeting of Experts on Lighting and Light-Signalling (GRE), Thirty-Ninth Session—Geneva, Switzerland.

October 27–30, 1997

Meeting of Experts on General Safety Provisions (GRSG), Seventy-Third Session—Geneva, Switzerland.

November 3, 1997

Administrative Committee for the Coordination of Work of WP29 (AC.2),

Sixty-Fifth Session—Geneva, Switzerland.

November 4–7, 1997

Working Party on the Construction of Vehicles (WP–29), Hundred and Thirteenth Session—Geneva, Switzerland.

December 1–4, 1997

Meeting of Experts on Passive Safety (GRSP), Twenty-Second Session—Geneva, Switzerland.

Issued on September 19, 1996.

Francis J. Turpin,

Director, International Harmonization.

[FR Doc. 96–24514 Filed 9–24–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–099; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1996 GMC and Chevrolet Suburban Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1996 GMC and Chevrolet Suburban multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1996 GMC and Chevrolet Suburban MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that was originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 25, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

LPC of New York Inc. of Ronkonkoma, New York (''LPC'') (Registered Importer 96–100) has petitioned NHTSA to decide whether 1995–1996 GMC and Chevrolet Suburban MPVs are eligible for importation into the United States. The vehicles which LPC believes are substantially similar are 1995–1996 GMC and Chevrolet Suburban MPVs that were manufactured for sale in the United States and certified by their manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995–1996 GMC and Chevrolet Suburbans to their U.S. certified counterparts, and found those vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

LPC submitted information with its petition intended to demonstrate that the non-U.S. certified 1995–1996 GMC and Chevrolet Suburbans, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995–1996 GMC and Chevrolet Suburbans are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power-Operated Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1995–1996 GMC and Chevrolet Suburbans comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: installation of a high mounted stop lamp.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch and a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the

docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 19, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–24515 Filed 9–24–96; 8:45 am]

BILLING CODE 4910–59–P

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. § 30162 for the agency to commence a proceeding to determine the existence of a defect related to motor vehicle safety.

On February 28, 1996, Mr. R.A. Whitfield of Crownsville, Maryland, submitted a petition asking NHTSA to determine whether the Suzuki Samurai 4x4 convertible sport utility vehicle contains a safety-related defect. The petition describes the alleged defect in this vehicle as a particular vulnerability to untripped or ''friction'' rollovers that do not require tripping of the vehicle (e.g. from an impact between the wheels and a curb) to initiate the roll, but instead occur in tight turns or crash avoidance maneuvers and result from the lateral drag of friction generated by the tires and the roadway surface. The petitioner attributed this untripped rollover vulnerability to what he characterized as the vehicle's very low roll stability and light weight, as well as to the high ratio of the occupants' mass to the vehicle mass, especially when the Samurai is loaded with passengers. Additionally, the petitioner asked NHTSA to determine whether the vehicle can safely carry passengers up to its claimed gross vehicle weight rating.

In 1988, the agency investigated the alleged rollover propensity of the Suzuki Samurai and two variants of this vehicle, the SJ410 and LJ80, in response to two petitions (DP88–011 and DP88–019). In the course of this investigation, NHTSA conducted its own vehicle testing and analyzed a large body of data, including accident and test data of these and other vehicles. However, NHTSA did not decide that the Samurai vehicles contained a safety-related defect, largely because the information available did not show that the rollover accidents were caused by a defect in the vehicle rather than by driver and/or environmental factors.

This petition did not provide any significant new evidence that bears on the issue of whether a safety-related defect exists in the Samurai. The only ''new'' information presented in the petition was the allegation that the Samurai 4x4 convertible sport utility vehicles cannot safely carry the number of occupants for which it has seats without affecting its propensity to roll over in a fatal crash.

The petitioner asserted that the cause of the subject vehicle's apparent disproportionate involvement in single-vehicle rollover-initiated fatal crashes is the very low roll stability and the high ratio of the occupants' mass to the vehicle mass, especially when the Samurai is loaded with passengers. This conclusion relies heavily on a statistical regression analysis which shows that the Suzuki Samurai 4x4 convertible has a higher percentage of identified friction rollovers in fatal, single-vehicle crashes as the number of its occupants increases. The petitioner further concluded that additional control variables such as roadway speed limit, driver age, and pavement condition are not statistically significant.

Contrary to the petitioner's analysis, the Samurai has a track width to center of gravity ratio higher than that of most other light sports utility vehicles. This ratio has been demonstrated to have a fundamental effect on the rollover propensity of vehicles.

Those vehicles with higher ratios tend to have lower rollover propensity. There is also evidence that the subject vehicle has a lower sensitivity to mass ratio than many other sport utility vehicles. Vehicles with a higher sensitivity to mass ratio demonstrate an increased propensity for rollover with the addition of mass that raises their center of gravity.

Based on a statistical analysis, the petitioner stated that more than 5,000 persons were occupants in Suzuki Samurai light utility vehicles that rolled over in single-vehicle crashes during 1988–1993 and more than 1,700 of these occupants were injured. He also stated that 46 percent of all Suzuki Samurai crashes in 1992–1993 were untripped rollover crashes. These are not actual numbers but estimates based on a very small sample size, which neglect many unknown variables, especially the driver and environmental factors. Moreover, one must always exercise great caution in the use of public reported accident statistics in evaluating alleged defects, such as that addressed in this petition. These statistics are heavily influenced by driver and environmental causes that tend to obscure vehicle causes. The petitioner's regression analysis does not overcome this difficulty. In fact, previous investigations demonstrate that many of the rollovers which have occurred appear to have involved adverse driver and environmental factors such as high risk driving maneuvers, drinking, ambient light, vehicle/road familiarity, etc.

Although the rollover crash involvement rate of the Samurai is no worse than that of most other light utility vehicles, it is significantly higher than most passenger vehicles. In a notice of the denial of a petition for rulemaking (52 FR 49037, December 29, 1987), NHTSA stated that while the agency recognized the existence of a higher rollover rate in light utility vehicles, there was no basis for proceeding with rulemaking based on stability factors alone because of the importance of other vehicle factors, the lack of predictiveness of the stability factor for vehicle rollover involvement, and statutory limitations that may preclude standards that have the effect of eliminating classes of motor vehicles. Similarly, the stability factor distinction does not appear to be an appropriate basis on which to conduct a defect investigation analysis.

After reviewing the petition and its supporting materials, as well as information furnished by Suzuki and within the agency—s possession from previous rulemaking proceedings and other actions, NHTSA has concluded that further investigation of the Suzuki Samurai—s rollover propensity is not likely to lead to a decision that the vehicle contains a safety-related defect and that a further commitment of agency resources on this matter is not warranted. The agency has accordingly denied the petition.

Authority: 49 U.S.C. 30162 (d); delegations of authority at CFR 1.50 and 501.8.

Issued on: September 19, 1996.

Michael B. Brownlee,

Associate Administrator for Safety Assurance.

[FR Doc. 96–24574 Filed 9–24–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (96–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved a fourth quarter 1996 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter RCAF (Unadjusted) is 1.092. The fourth quarter RCAF (Adjusted) is 0.768, an increase of 0.3% from the third quarter 1996 RCAF (Adjusted).

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 927–6243. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423, or telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: September 19, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–24564 Filed 9–24–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, October 9, 1996, at 2:00 p.m.
Wednesday, October 23, 1996, at 2:00 p.m.
Wednesday, November 6, 1996, at 2:00 p.m.
Wednesday, November 20, 1996, at 2:00 p.m.
Wednesday, December 4, 1996, at 2:00 p.m.
Wednesday, December 18, 1996, at 2:00 p.m.

The meetings will be held in Room 246, Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee (05), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 18, 1996.

By Direction of the Secretary.

Eugene A. Brickhouse,

Committee Management Officer.

[FR Doc. 96–24520 Filed 9–24–96; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday
September 25, 1996

Part II

Department of Housing and Urban Development

Funding Availability for the Fair Housing Services Center in East Texas; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4127–N–01]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Funding Availability for the Fair Housing Services Center in East Texas

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for the Fair Housing Services Center (FHSC) in East Texas.

SUMMARY: This NOFA announces the availability of funds and HUD's request for proposals to establish a Fair Housing Services Center in East Texas to be administered by a non-profit organization (NPO). HUD will award to, and enter into a grant agreement with, an NPO to administer the FHSC as required by the Final Judgment and Decree (Final Judgment) in *Lucille Young* v. *Cisneros*, CA No. P–80–8–CA, (E.D. Tex.; dated March 30, 1995). HUD has been ordered to provide $500,000 per year for a period of at least five years to fund the FHSC to be located in Beaumont, Texas, with branch offices within the 36 county area that constitutes East Texas, and one mobile office unit to provide services to remote locations throughout East Texas. Appendix A to this Notice is a copy of the Request for Proposals (RFP) and Program Guidelines as approved by the Court. All information relating to the RFP is included in the RFP.

DATES: The proposal deadline for the Fair Housing Services Center NOFA is October 25, 1996, 3:00 p.m., Washington, DC time.

The above-stated proposal deadline is firm as to date and hour. In the interest of fairness to all competing NPOs, HUD will treat as ineligible for consideration any proposal that is not received before the proposal deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, proposal materials sent via facsimile (FAX) transmission.

ADDRESSES: The original and nine complete copies of the proposal should be submitted by the deadline to Mr. Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410.

FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone number (202) 708–0477 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Proposals

All information related to the RFP is available in Appendix A to this Notice. Appendix A has been approved by the Court under the terms of the Final Judgment and Decree as identified above and therefore is the only document potential bidders should use to determine the requirements of the RFP.

Background

The plaintiffs, African-American residents of public housing in East Texas, filed suit in 1980 alleging that HUD had knowingly maintained a system of segregated housing in a 36-county area of East Texas, in violation of the U.S. Constitution and various civil rights laws. The plaintiffs contended that there was segregation in HUD-supported low income public housing, Section 8 Existing Housing and other HUD-assisted multifamily housing programs.

In 1982, the U.S. District Court for the Eastern District of Texas certified a class consisting of all African-American applicants for and residents of HUD-funded public housing, Section 8 housing and other assisted housing programs in the 36-county area. In 1985, the court issued a liability decision finding that HUD had knowingly and continually maintained a system of segregated housing in the 36-county area.

In 1987, while an appeal was pending, HUD and the plaintiffs reached an agreement to limit the scope of the case and the class of plaintiffs. In 1988, the court appointed a special master and issued an interim injunction which compelled HUD to require each of the 70 housing agencies to implement race-conscious Tenant Selection and Assignment Plans and to provide all class members a series of notices of desegregative opportunities in all HUD-assisted housing in East Texas. On March 30, 1995, U.S. District Judge William Wayne Justice issued the Final Judgment that approved the desegregation plans and the plan amendments and required HUD to fund the FHSC.

The following is an outline of the activities of the FHSC (bidders should refer to the attached RFP for details of the activities and responsibilities of the FHSC):

1. Familiarity with all relevant HUD regulations;
2. Outreach to landlords and assistance with exception rents;
3. Prescreening services;
4. Counseling services and other social services support;
5. Responsibilities to Class members who receive a desegregative voucher/certificate;
6. FHSC encouragement and assistance to class members to make desegregative moves;
7. Information provided to Class members;
8. Quarterly and Annual Performance Reports; and
9. Respond to Information Requests from HUD.

Bidders must respond to the requirements of the RFP attached to this NOFA and HUD encourages bidders to refer to the RFP for all appropriate information concerning the Fair Housing Services Center.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o)(1) of the HUD regulations, the policies and procedures contained in this notice relate only to the provision of information services whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including Public Housing Agencies.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

Section 102 of the HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each proposal submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 calendar days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis.

Section 103 of the HUD Reform Act

Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) and HUD's implementing regulation codified as 24 CFR part 4, subpart B, applies to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by these requirements from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under these requirements.

Applicants or employees who have ethics-related questions should contact the HUD Office of Ethics (202) 708–3815 (TTY/Voice) (this is not a toll-free number). Any HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact the appropriate Field Office Counsel or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the ''Byrd Amendment'') and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Dated: September 18, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix A—Request for Proposals (RFP) and Program Guidelines for Establishing a Fair Housing Services Center (FHSC) in East Texas

This is a request for proposals to establish a FHSC in East Texas to be administered by a nonprofit organization (''NPO'') as required by the Final Judgment and Decree in (''Final Judgment'') *Lucille Young* v. *Cisneros,* CA No. P–80–8–CA, (E.D. Tex.; dated March 30, 1995). HUD has been ordered to provide $500,000 per year for a period of at least five years to fund a FHSC for East Texas to be located in Beaumont, Texas, with several branch offices within the 36-county area that constitutes East Texas, and one mobile office unit to provide services to remote locations throughout East Texas. The funding will provide for a variety of services designed to facilitate desegregative moves of class member applicants for and residents of public housing throughout the seventy (70) Public Housing Authorities (''PHAs'') located in the 36-county jurisdiction of the *Young* Final Judgment. The specific responsibilities of the FHSC are enumerated in the Scope of Work below, in the Final Judgment (copy attached), and the original desegregation plans and the plan amendments approved by the Court. The Final Judgment is the document that controls the activities of the FHSC. The FHSC is bound by the terms of the Final Judgment and final desegregation plans (as determined by the Court).

The U.S. Department of Housing and Urban Development (''HUD'') will award to and enter into a contract with an NPO. HUD's Beaumont Staff Office will monitor performance. The term of the contract shall be for one year, renewable in one year increments for at least five years. The renewal of the contract is contingent upon the FHSC's ability in meeting the conditions set forth in Section B, ''Scope of Work'' below, and in complying with the Final Judgment. HUD shall provide $500,000 for the activities of the FHSC for each year of operation, and a total of 1,000 Section 8 rental assistance vouchers and/or certificates (excluding incremental and turnovers) to be used toward HUD's obligation to provide 5,134 desegregative housing opportunities to *Young* class members.

The housing opportunity counseling funds will be provided to the FHSC through HUD's contract administrator. HUD will award the 1,000 desegregation vouchers/certificates to PHAs that have jurisdiction in the areas where the *Young* class members move. The PHAs that are awarded these vouchers/certificates are herein called ''receiving PHA(s)''.

DATES: Deadline for proposals: Proposals must be received by 3 P.M., Washington DC time, on October 25, 1996. Proposals received after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents be accepted that are postmarked after October 25, 1996. It is the responsibility of all applicants to ensure that their proposal is received by the above deadline.

ADDRESSES: The original and nine complete copies of the proposal should be submitted by the deadline to Mr. Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW., Washington, DC 20410.

CONTACTS FOR FURTHER INFORMATION: For general information, interested nonprofit organizations should contact—Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

The following sections of this RFP are:

I. Scope of Work

A. Background and Objectives

The plaintiffs in *Young*, African-American residents of public housing in East Texas, filed this action in 1980, alleging that HUD had knowingly maintained a system of segregated housing in a 36-county area of East Texas, in violation of the U.S. Constitution and various civil rights laws. The plaintiffs contended that there was segregation in HUD-supported low income Public Housing, Section 8 Existing Housing Program, and other HUD-assisted multifamily programs (including HUD-insured housing). While there are presently 70 individual public housing authorities (''PHAs'') in the 36-county area, none of the PHAs are included in the lawsuit as parties.

In 1982, the U.S. District Court for the Eastern District of Texas (''Court'') certified a class consisting of all African-American applicants for and residents of HUD-funded public housing, Section 8 housing and other assisted housing programs in the 36-county area.

In 1985, the court issued a liability decision, finding that HUD had knowingly and continually maintained a system of segregated housing in the 36-county area. In 1987, while an appeal was pending, HUD and the plaintiffs reached an agreement to limit the scope of the case and class of plaintiffs to public housing in the 36-county area. The *Young* class thus consists of all African-American residents of, or applicants for, public housing in the 36-county area.

In 1988, the court appointed a special master and issued an interim injunction, which, among other things, compelled HUD to require each of the 70 PHAs to implement race-conscious Tenant Selection and Assignment Plans and to provide all class members a series of notices of desegregative opportunities in all HUD-assisted housing in East Texas.

After settlement discussions between HUD and the plaintiffs proved unsuccessful in 1990, the court issued an Order for Further Relief, dated September 9, 1990, which required, among other things, that HUD develop desegregation plans or assertions of unitary status for each of the 70 PHAs. The court ordered HUD, in developing each plan, to provide for the equalization of conditions between predominantly African-American projects and the conditions in the projects and neighborhoods where the majority of white HUD-assisted housing recipients resided.

By June 1991, HUD had submitted desegregation plans or unitary status assertions for all 70 PHAs to the court for approval. Although the court did not rule as to the adequacy of the plans and unitary status assertions at that point, HUD began to implement the desegregation plans. In October 1993, after further analysis, HUD withdrew its submission of the plans and assertions after having determined that they did not fully or adequately address the requirements of the September 1990 Order.

HUD filed revised plans on February 8, 1994, along with the East Texas Comprehensive Desegregation Plan (Comprehensive Plan). The Comprehensive Plan reinstituted the original plans filed in 1990–91, but amended them to provide for further actions, and replaced all unitary status assertions with new desegregation plans (asserting that none of the 70 PHAs had, as of yet, attained unitary status).

The Comprehensive Plan filed in February 1994 called for the creation of 1,000 desegregative housing opportunities for class members over a five-year period. In May 1994, after further analysis, HUD agreed to provide for the creation of 5,134 desegregative opportunities within seven years. On March 30, 1995, U.S. District Judge William Wayne Justice issued the Final Judgment, that approved the original desegregation plans and the plan amendments and required HUD to fund the FHSC.

B. Activities of the FHSC

1. The FHSC must become familiar with all relevant HUD regulations (e.g., those governing Section 8 assistance, public housing, assisted housing, and Fair Housing), the Final Judgment and applicable individual desegregation plans. The FHSC shall order and/or approve all issuances by the receiving PHA of Section 8 vouchers or certificates to class members or others pursuant to the Final Judgment Decree, § II.

2. Outreach to landlords and assistance with exception rents. The FHSC shall encourage and assist in the development of desegregative housing opportunities, including outreach to private landlords in non-minority areas for the purpose of encouraging them to participate in the Section 8 existing program, as well as counseling and referral services to Section 8 existing housing tenants and applicants who wish to utilize their Section 8 certificates or housing vouchers in a manner furthering desegregation pursuant to ¶ IV.5.d. of the Final Judgment.

The FHSC, along with the PHAs, shall monitor rents in desegregative housing opportunity areas every six months to determine whether such rents are adversely affecting housing opportunities. If so, the FHSC shall take such steps as are necessary to overcome this adverse affect, including by requesting that HUD consider granting exception rents for certificates or payment standards for vouchers, pursuant to the Court's 1990 Order for Further Relief, if such exception rents or payment standards would increase the availability of desegregative housing opportunities for class members.

3. Prescreening services. The FHSC shall prescreen all clients of the FHSC who have not already been screened by the receiving PHA, to document each client's ability and willingness to comply with an acceptable lease and HUD program requirements pursuant to ¶ IV.5.a. of the Final Judgment.

4. Counseling services and other social services support. Pursuant to ¶ IV.5.b. of the Final Judgment, the FHSC shall provide counseling services designed to provide information and counseling with respect to class members including the following: inform applicants of desegregative housing opportunities; provide offers and/or referral to such housing opportunities; assist applicants in taking advantage of those opportunities; and help them overcome obstacles inherent in desegregative moves. In addition, the FHSC will: provide escort assistance to

available units; provide post-move support services; provide information about educational and economic opportunities; arrange home visits; and communicate information about the positive features of neighborhoods where there is housing that represents desegregative housing opportunities as defined in the Final Judgment.

5. Class members who receive a desegregative voucher/certificate. Under the Final Judgment and Decree, HUD will provide to class members 5,134 desegregative housing opportunities, over a seven-year period. The actual placement of a total of 40 class members in Alba (1), Corrigan (2), Fruitvale (2), Kirbyville (8), Mount Pleasant (22), Talco (2), and Trinidad (3) is also required under the Final Judgment. Two hundred desegregative vouchers/certificates will be provided in the first year of the FHSC's operation, and 200 per year thereafter for the following five years. The class members who receive one of the desegregative vouchers/certificates will be required to use their vouchers/certificates in rental housing that constitutes a desegregative opportunity as defined in the Final Judgment. The FHSC will provide to the class members who receive a desegregative voucher/certificate counseling services and other forms of assistance, as necessary, to aid them in locating desegregative housing.

Pursuant to ¶ IV.5.g. of the Final Judgment and Decree, FHSC will give each class member written notice, every six months, in a form and distribution method to be approved by HUD, of all HUD-assisted and/or HUD-subsidized low-income housing developments in the housing markets where the class member resides that offer the class members a desegregative housing opportunity, provide notice of the full address, telephone number, and name of the person responsible for accepting applications for the development, a short description of the type of housing offered by the development, and the general eligibility requirements or the development. The FHSC will include in the Notice to class members, information about the mobility program, and the opportunities available through it.

a. PHA Responsibilities. The receiving PHAs will be awarded 1,000 desegregation certificates and vouchers to be used toward HUD's obligation to provide 5,134 desegregative housing opportunities to *Young* class members; conduct the intake and initial eligibility determination of applicants; and conduct any required Housing Quality Standards (''HQS'') inspections of units. The 1,000 desegregative vouchers/certificates are for the exclusive use of class members. Certificates or vouchers obtained by receiving PHAs from other East Texas § 8 programs through turnover, recapture, or otherwise, may be provided to non-class members when required by HUD under subparagraph c below.

b. Award and Turn-in of Desegregative certificates. Class members who initially receive a desegregative voucher/certificate will have 120 days within which to enter into a lease for a unit of desegregative housing as defined, or, if the FHSC has failed to offer a unit within that time, until a desegregative offer is in fact received. At the expiration of 120 days, if an offer and if a lease has not been entered, the applicant has the option of continuing to search for housing with no restrictions as to locations for an additional sixty days. However, should the class member locate in a minority neighborhood, this will not count toward HUD'S obligation to create 5,134 desegregative housing opportunities. At the end of the sixty-day period, the certificate would revert to the receiving PHA unless it grants an extension.

c. Special procedures for Affirmative Action Waiting List Initiatives. HUD shall provide to the FHSC the name and address of every class member applicant who is to be offered a certificate and counseling as an alternative to public housing when a PHA uses an affirmative action waiting list procedure that has been approved by the Court to offer the unit that would otherwise have been offered to the class member, to a white applicant whose name is listed lower on the waiting list. Paragraph III of the Final Judgment is to be followed when implementing the Affirmative Action Waiting List initiatives. When a class member is offered a certificate or voucher under these circumstances:

(1) The class member is to be made an offer of alternative housing within 60 days of the date on which the public housing unit that is to be offered to a white applicant available for assignment.

(2) The class member must be provided the § 8 voucher or certificate and an offer of a unit must be made within 120 days from issuance of the certificate to the class member that meets the requirements of VII.7 of the Final Judgment and must notify HUD within one day if the applicant accepts the offer;

(3) If the class member rejects the offer of alternative housing, the FHSC must notify HUD within one day of the rejection, state the reason(s) for the rejection, and provide information as to the location of the rejected unit and evidence of its availability.

(4) If, after 120 days, an alternative housing opportunity has not been found for the class member, the class member may opt to hold the certificate for up to sixty additional days and to search for housing on her or his own without restriction as to location.

HUD will provide the FHSC with the name and address of every non-class member who is to receive a § 8 voucher/certificate as a result of the implementation of the Affirmative Action Waiting List. The FHSC must instruct the receiving PHA to issue a § 8 existing housing voucher/certificate to the non-class member applicant who held the highest position on the waiting list and who would otherwise have been offered an available public housing unit but for the advancement of a class member to the head of the waiting list for that unit under the Affirmative Action Waiting List.

d. Priority of Offers. The FHSC will offer the desegregative certificates to class members according to the following priority: (1) To class members residing in predominantly African American low-rent public housing projects; (2) to class members who are on a waiting list for low-rent public housing as of March 30, 1995; (3) to class members who apply for low-rent public housing subsequent to the date of March 30, 1995.

6. The FHSC shall encourage and assist class members to make desegregative moves within the low income housing program and to privately owned assisted housing programs pursuant to ¶ IV.5.e. of the Final Judgment. The FHSC shall develop and implement a plan to refer class members, with or without the use of § 8 certificates or vouchers, to privately owned, HUD-assisted, or FmHA housing located in areas which provide a desegregative housing opportunity. FHSC shall conduct outreach to the landlords and/or owners of all such HUD-assisted, or FmHA private housing providers located in areas which provide a desegregative opportunity and other § 8 existing agencies, to encourage participation in the FHSC-developed referral plan. FHSC shall monitor the performance of other § 8 existing agencies in the 36-county area in this regard, and shall also develop a system to record all offers of an/or placements of class members in desegregative housing by other § 8 agencies in East Texas.

7. Information. The FHSC shall designate specific personnel to respond to requests for information and requests for assistance from class members

desiring to obtain a desegregative housing opportunity as defined in the Final Judgment. The assistance to be provided shall include referrals of interested class members to public housing developments, and to programs other than low income public housing, that offer desegregative housing opportunities in East Texas.

8. Quarterly Status and Annual Performance Report. The FHSC shall provide quarterly status reports on significant activities taken under the requirements of the Final Judgment and Decree. HUD will file each report with the court and serve it on plaintiffs' counsel within thirty days of the end of the quarter covered in the report.

The FHSC shall submit an annual report on their performance of their obligations under the Final Judgment and Decree to the plaintiffs, with a copy to go to the court by April 30th of each year.

9. HUD's Right to Request Information. The FHSC will collect and maintain the data necessary to monitor the program toward providing desegregative opportunities. This would include: (a) The number of class members seeking desegregated housing opportunities; (b) the number of class members actually leasing units in non-impacted neighborhoods; (c) the number and name of housing providers recruited into the program; and (d) the number of class members assisted and number of hours staff members devoted to assisting families, and similar data as HUD may require. The FHSC will comply with any informational requests from HUD that HUD, in its discretion, makes from time to time during the course of the program.

C. Administrative Requirements

The FHSC shall be required to adhere to the following three administrative requirements in performing work under this award:

1. Submission of quarterly progress reports detailing progress made in fulfilling the tasks and sub-tasks in the approved Project Management Plan;

2. Distribution of an Evaluation Questionnaire to all persons, organizations, agencies, or other entitles receiving services, participating, or otherwise involved in this project and submission of a ''Customer Satisfaction Report'' semi-annually;

3. Preparation of a final report in a format suitable for information transfer, exchange and dissemination to other PHA's communities, or other entities interested in providing such services. The final report should detail the case study of East Texas Desegregation Counseling Project and provide insights and recommendations for others who may wish to develop similar programs.

D. Monitoring

The FHSC shall monitor the compliance of the providers of low-income housing in the class action area (low-income public housing and assisted housing) with the fair housing laws and the requirements placed upon the providers under the comprehensive plan and the individual desegregation plans pursuant to ¶ IV.5.c. of the Final Judgment.

II. Contents of Proposal

A. Eligible Applicant

The proposal must be submitted by an NPO and must include all information requested in this section. Any proposal submitted after the due date or that does not contain the required information may be rejected. The NPO must submit documentation as a part of the proposal that verifies the ''501(c)3'' and/or ''501(c)4'' (IRS Code) status, of the NPO and its legal authority to operate throughout East Texas area.

Corporate documents. The NPO shall provide a copy of its Articles of Incorporation.

B. Description of Activities and Costs

It is to an NPO's advantage if it describes its experiences, if any, as requested in this section. In the case of a newly formed NPO, the NPO may substitute a description of experience and knowledge of its principal officers and employees where a description of its own experience is requested below.

1. Description of experience. The NPO must submit a narrative description of its experience in assisting lower-income families and/or African-Americans or other minorities in the search for housing. The NPO should describe its working knowledge of HUD's Section 8 programs, as well as its Public Housing and Assisted Housing programs. The NPO should include a list of its projects over the last two years that are relevant to this procurement action. HUD reserves the right to request information from any source so named.

2. Knowledge of fair housing and mobility experience. The NPO must submit a narrative description of its knowledge of, and experience in assisting African-Americans with fair housing as well as monitoring providers for violations of the fair housing laws. The narrative should specifically address the NPO's knowledge of the rental market in racially non-impacted areas and the barriers that limit access to that housing by lower-income minority persons. The NPO shall also describe its experience with mobility activities.

3. Description of organizational capacity. The NPO must submit a narrative description of its capability and capacity to handle a project of this scope. The narrative is to include a list of current federally funded activities. The NPO should provide an organizational chart of key personnel to be involved in each activity under the agreement, and the percentage of time that they will devote to each activity. The NPO should include resumes, references, or other documents that show that key personnel have experience in the tasks described in the ''Scope of Work'', the Final Judgment and Decree, and applicable individual desegregation plans. If the NPO plans to utilize subcontractors, consultants or other agents, it should provide the same information with respect to them.

4. Management plan. A summary of a management plan as described below, particularly as the Plan pertains to the evaluation factors set out in Section III. A. of this RFP, shall be submitted as part of each organization's proposal. A detailed narrative of a management plan to carry out the programs as outlined in the Final Judgment and Decree and this RFP. This plan will be delivered to the HUD Beaumont Staff Office within 15 days after the agreement is awarded. The Plan will include a description of: (1) Each task and sub-task; (2) the methodology to be used in accomplishing each task and sub-task; (3) internal financial management and oversight procedures and policies; (4) when each task, sub-task and establishment of financial oversight procedures will be accomplished; (5) staff and organization (including an organizational flow-chart), including the staff-loading for each task and sub-task; (6) projected costs for each task and sub-task by calendar quarter; (7) the support that is expected to be required from HUD and its contract administrator; and (8) projected site and cost of office space and mobile unit, if applicable. The final management plan will then be submitted by HUD to the Court for approval.

C. Deficient Applications for FHSC

A proposal will be deemed technically ineligible if:

1. It does not fully adhere to the guidelines established herein, including budgetary requirements;

2. The complete proposal is not received by the deadline;

3. A comprehensive line item budget is not included;

4. The project budget for costs charged against funds exceeds $500,000; or

5. Unsigned proposal or certification forms are submitted.

III. Factors for Award

A. Evaluating Rating Factors

HUD will use the following criteria to evaluate proposals received in response to this RFP. In all cases, the number of points stated represents the maximum. In the actual scoring, any given application may receive less than the maximum for each category, based on an evaluation of competing applications.

1. Familiarity with housing mobility counseling and HUD housing programs (30 points).

a. Demonstrated work experience with fair housing mobility counseling of lower income and minority families. (10)

b. Demonstrated work experience with HUD's Section 8 Public Housing or privately owned assisted housing programs. (10)

c. Demonstrated work experience in coordinating resources and activities provided by a variety of government, private sector agencies, and organizations for providing housing and/or fair housing law enforcement support. (10)

2. Knowledge of fair housing and mobility experience (25).

a. Demonstrated record of participation in fair housing activities, particularly with respect to low income families and racial or ethnic minorities and monitoring providers of low-income housing for violations of the fair housing laws. (10)

b. Demonstrated knowledge of and experience in mobility services for African-American tenants. (10)

c. Experience in rental markets in the racially non-impacted areas. (5)

3. Organizational capacity (20 points).

a. Demonstrated capability and capacity of the non-profit organization to effectively manage a grant of this scope. (10)

b. Demonstrated capability of the non-profit's key personnel, including officers, employees, partners, subcontractors, consultants and other agents to accomplish the work responsibilities of the FHSC. (10)

4. Quality of Proposal (25 points).

a. Extent to which the proposal demonstrates an understanding of the Final Judgment and Decree, the applicable individual desegregation plans, and this RFP, and proposes a realistic approach to all the work requirements that most nearly meet the conditions of the Final Judgment and Decree. (15)

b. Degree of clarity and acceptability of the overall proposal and specific methods, procedures and steps as outlined in the Management Plan. (10)

B. Certification

Each application must contain an original and nine copies of the certifications identified below. Each certification must be signed by the Chief Executive Officer of the applicant organization unless otherwise noted.

1. Drug-free Workplace Certification. The non-profit must certify that it will provide a drug-free workplace and comply with the drug-free workplace requirements at 24 CFR Part 24, Subpart F. See attached certification for drug-free workplace.

2. Certification regarding Lobbying pursuant to Section 319 of the Department of the Interior Appropriation Act of 1989, generally prohibiting use of appropriated funds for lobbying.

3. Certification of no outstanding violations of: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601–19); Executive Order 11063, as amended by Executive Order 12892 and HUD regulations (24 CFR part 107); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR part 8); Title II of the Americans with Disabilities Act of 1990 (and applicable regulations at 28 CFR Part 36); the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and regulations issued pursuant thereto (24 CFR part 146); Executive Order 11246 and all regulations issued pursuant thereto (41 CFR Chapter 60–1); Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701U) and regulations pursuant thereto (24 CFR part 135).

4. Conflicts of Interest. The nonprofit shall provide a statement which describes all relevant facts concerning any past, present or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed which could present a possible conflict of interest with respect to: (a) being able to render impartial, technically sound, and objective assistance or advice; or (b) being given an unfair competitive advantage. The nonprofit shall describe its current and past relationship with HUD as it relates to a possible conflict of interest in carrying out the counseling program.

Such conflict could arise when any employee, officer or agent of the PHA, HUD or plaintiffs' counsel; any member of his or her immediate family, his or her partner, or organization which employs or is about to employ any of the above has a financial or other interest in the NPO that is selected.

C. Cost Factor

Cost will become relevant in the case of a tie score in the technical part of the evaluation, as stated under ''Contract Award'' below. It is the goal of the Final Judgment to provide high quality services that will contribute substantially to the desegregation of all federally assisted housing in East Texas. It is expected that the costs of each task and sub-task will be addressed in the proposal, including the costs for sub-contractors, etc. HUD reserves the right to reject any proposal that does not adequately analyze costs.

D. Contract Award

Negotiations will be conducted with those NPOs whose proposals fall within a competitive range from a technical perspective. Award will be made to the most responsive NPO whose proposal is considered to be the most advantageous. In the event two or more offerors are considered technically equivalent, cost efficiency—i.e., the extent to which the non-profit that has a plan that will accomplish the most desegregative placements of all kinds within the established financial parameters—will be considered of primary importance.

E. Approval by HUD and Court Review

Notwithstanding the foregoing, a contract shall not be entered into for the FHSC without the express written approval by HUD of the entity and proposal selected, and of the contract with such entity. The initial and any subsequent HUD decisions to select an entity to contract with the NPO and the initial and any subsequent HUD approvals of the entity and proposal selected and of the contract with the NPO are subject to judicial review by motion of the plaintiffs under ¶ IV.6. of the Final Judgment and Decree.

Certification Regarding Drug-Free Workplace Requirements (From 24 CFR 24, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification,

or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant: Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

In the United States District Court for the Eastern District of Texas Paris Division

Lucille Young, et al., Plaintiffs, v. Henry G. Cisneros, et al., Defendants. [P–80–8–CA, Final Judgment]

Final Judgment and Decree

In 1985, defendants in the above-entitled and numbered civil action were found liable for knowingly and continually maintaining a system of segregated housing in a thirty-six county area of East Texas in violation of the constitutional and civil rights of a class of African-Americans. *Young* v. *Pierce,* 628 F. Supp. 1037 (E.D. Tex. 1985). An interim injunction issued in this action in 1988. *Young* v. *Pierce,* 685 F. Supp. 986 (E.D. Tex. 1985). Such interim injunction was amended by order of this court in 1990. Order for Further Relief, September 10, 1990. After extensive briefing by the parties and a hearing on the plaintiffs' motion for final remedy, it is

Ordered, Adjudged, and Decreed that the Honorable Henry G. Cisneros, as Secretary of the Department of Housing and Urban Development (''HUD''), his officers, agents, servants, employees, successors, and all persons in active concert or participation with them shall be, and are hereby, *Permanently Enjoined,* either directly, or through contractual or other arrangements, to take the actions necessary to effectuate the relief decreed by the provisions of this Final Judgment and Decree, as follows:

1. The individual desegregation plans and the individual desegregation plan amendments for each Public Housing Authority (''PHA'') submitted by the Department of Housing and Urban Development (''HUD'') are hereby approved, subject to the modifications contained in this judgment and decree. As used herein, ''individual desegregation plan''or ''desegregation plan'' includes both the original, individual desegregation plan filed by HUD for a particular PHA and the individual plan amendment filed by HUD for that PHA. Within ninety days from the issuance of this judgment and decree HUD shall re-file the individual desegregation plans, which shall fully incorporate the amendments to such plans, in order that a fully integrated plan for each PHA will be on file.

2. The desegregation plans shall be implemented and interpreted in a manner consistent with the applicable provisions of HUD's East Texas Comprehensive Desegregation Plan (''Comprehensive Plan'') and with the provisions of this judgment and decree. HUD shall discharge all duties imposed upon HUD by the terms of the Comprehensive Plan and by the provisions of this judgment and decree. In the event of any inconsistency or conflict between the provisions of this judgment and decree and the provisions of either the Comprehensive Plan or the desegregation plans, the provisions of this judgment and decree shall be controlling.

3. All orders, including the interim injunction previously issued in this action, shall be in full force until HUD attains unitary status, as defined in this judgment and decree, and judicial supervision ends in accordance with this judgment and decree. All previous orders entered in this action shall be interpreted in a manner consistent with this judgment and decree. In the event of any inconsistency or conflict between the provisions of this judgment and decree and the provisions of any earlier order, the provisions of this judgment and decree shall be controlling.

4. All provisions of this judgment and decree shall require, or be construed as requiring, compliance with federal statutes as they now exist, or as they may be amended or enacted.

I. Physical Improvement to Projects and Neighborhoods

1. Financial assistance for physical improvements specified in the desegregation plans shall be provided by HUD or, in the case of neighborhood improvements receiving financial assistance under the Community Development Block Grant Small Cities Program (''CDBG Small Cities Program''), by the State of Texas, within seven years of the date of this judgment

and decree. The review and approval process for applications for financial assistance shall be conducted in accordance with all applicable laws and regulations, including the rules governing competitive programs, where appropriate.

2. Each such physical improvement shall be completed as soon as is feasible and practicable after approval and funding and, in no event, shall the time period for the completion of any such physical improvement exceed a period of three years from the date upon which the application is approved and funded. With respect to neighborhood improvements being carried out by a municipal government with financial assistance under the Community Development Block Grant Program (''CDBG program''), it shall be the responsibility of HUD to take all appropriate actions within HUD's control to obtain completion of those neighborhood improvements within the time periods specified herein.

3. If any municipal government fails to take an action necessary to complete the neighborhood improvements specified in the PHA's desegregation plan, HUD shall take appropriate action in accordance with the regulations governing the CDBG program. These actions may include (i) enforcement mechanisms available to HUD under its obligation affirmatively to further fair housing and (ii) causing the PHA to institute against the municipal government enforcement based on the municipality's violation of the cooperation agreement between the PHA and the municipality.

4. If any PHA fails to take an action necessary to complete the physical improvements specified in the PHA's desegregation plan, HUD shall take appropriate enforcement action against the PHA. These actions may include one or more of the actions described in the Comprehensive Plan at p. 20 for dealing with the failure of a PHA to follow its desegregation plan.

5. Where HUD has required improvement of neighborhood conditions as part of the desegregation remedy for a PHA, HUD shall cause that PHA and the responsible municipality to enter into a memorandum of understanding under which the municipality agrees to carry out the required neighborhood improvements. Each such memorandum of understanding shall identify the neighborhood conditions to be corrected or upgraded and describe the work to be done in carrying out such correction or upgrading. If such work requires funding under the CDBG Program, the memorandum of understanding shall also contain a preliminary cost estimate for the required work. All such memoranda of understanding shall be entered into by the PHAs and their respective municipalities no later than July 1, 1995. All such memoranda of understanding shall be submitted for the approval of the court. Upon approval by the court, the memorandum of understanding between a PHA and a municipality shall define the full extent of the obligation to correct or upgrade neighborhood conditions in that PHA and in that municipality.

6. In approving applications for the funding of physical improvements, or the provision of amenities, to low-rent public housing projects in the class action area, HUD shall, to the extent consistent with applicable statutory and regulatory requirements, give priority to the funding of applications for making such improvements, or providing such improvements, to racially identifiable African-American projects, *i.e.*, low-rent public housing projects in which seventy-five percent (75%) or more of the residents are African-Americans.

7. The amended individual desegregation plans require, and the comprehensive plan contemplates, certain physical improvements which include, *inter alia,* the provision of air conditioning equipment, laundry facilities, community centers, and playgrounds. Plaintiffs additionally seek the provision of carpeting, dishwashers, a utility allowance to account for the reasonable use of air conditioning, and garbage disposals in predominately and historically African-American projects. Moreover, plaintiffs identify other conditions present at predominately and historically African-American projects that are not present at the historically and predominantly white projects, including inadequate security and maintenance.

HUD shall satisfy the obligations of the individual desegregation plans as they pertain to amenities and services. In addition to those amenities and services required by the individual desegregation plans, HUD shall provide the amenities and services available in any of the historically and predominantly white projects at the historically and predominately African-American projects of like or similar kind within the PHA. The amenities and services required at the non-elderly family units at historically and predominately African-American projects in a given PHA are to be determined by evaluating the historically and predominately white non-elderly family units within the same PHA. For example, HUD must ensure that the historically and predominately African-American non-elderly family units include carpeting if a historically and predominately white non-elderly family unit includes carpeting. Moreover, both projects shall be staffed with maintenance personnel in equal numbers or such numbers as necessary to maintain the premises in substantially similar condition.

II. Creation of Desegregated Housing Opportunities

1. Within seven years from the date of this judgment and decree, HUD shall create a total of 5,134 desegregated housing opportunities for elderly and non-elderly class members in non-minority census blocks in the class action area. Desegregated housing opportunities shall be offered, first, to class members residing in predominately African-American low-rent public housing projects, second, to class members who are on a waiting list for low-rent public housing as of the date of this judgment and decree, and, third, to class members who apply for low-rent public housing subsequent to the date of this judgment and decree.

2. a. The term ''non-minority census block'' is defined in accordance with the ''¼ mile radius'' methodology described in the report of the East Texas Demographic and Mapping Analysis conducted by George Galster of the Urban Institute under a contract with HUD (Defendants' Exhibit 116). A given census block shall be regarded as a non-minority census block, if the area consisting of the given census block, plus all census blocks within the PHA jurisdiction whose centroids lie within a ¼ mile radius of the centroid of the given census block (i) has a percentage of white population of more than eighty percent (80%), or (ii) has a percentage of white population greater than 100%, minus the PHA jurisdiction's overall percentage of African-American population.

b. Notwithstanding subsection II.2.a., a census block will not be regarded as a non-minority census block, if (i) more than fifty percent (50%) of the African-Americans living in the area described by the ¼ mile radius methodology are concentrated in individual census blocks with more than eighty percent (80%) African-American population, or (ii) the population of the area described by the ¼ mile methodology is more than forty percent (40%) African-American or (iii) geographic, demographic, or social factors, including proximity to racially impacted areas or isolation from population centers or community services, indicate that the census block

should be regarded to be in a racially impacted area.

3. To the maximum extent feasible and practicable, HUD shall, through the use of tenant-based housing assistance, create within each PHA jurisdiction, the number and type (elderly and non-elderly) of desegregated housing opportunities which HUD has determined to be needed within each particular PHA jurisdiction, as indicated in Defendants' Hearing Exhibit No. 119, Table 1.

4. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of tenant-based housing assistance, that PHA's unmet need shall be satisfied by offering class members residing within that particular PHA a desegregative housing opportunity located in an adjacent jurisdiction. Such adjacent jurisdiction can be no more than thirty-five miles from the PHA and must be accessible from the PHA by adequate and feasible highway links and public transportation.

5. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of tenant-based housing assistance, either within the PHA jurisdiction or an adjacent jurisdiction, the HUD shall, to the maximum extent feasible and practicable, and consistent with all statutory and regulatory requirements, satisfy that PHAs unmet need for desegregated housing opportunities through the use of project-based Section 8 existing housing certificates and vouchers.

6. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of either tenant-based or project-based Section 8 housing assistance, then that PHA's unmet need shall be satisfied through the creation of desegregative housing opportunities anywhere within the class action area.

7. HUD shall be given credit for the creation of a desegregated housing opportunity if:

a. A class member has been provided by HUD with a desegregative housing voucher or housing certificate. A desegregative housing voucher or housing certificate is a Section 8 existing housing certificate or housing voucher, limited for the first 120 days to use in non-minority census blocks.

b. The class member is offered mobility counseling to assist the class member to locate an appropriate housing unit.

c. The class member has been referred by the mobility counseling service to a landlord who is willing to accept the class member's certificate or voucher for the rental of a housing unit.

d. The housing unit offered by the willing landlord is located in a non-minority census block.

e. The unit offered by the willing landlord meets the applicable Section 8 existing housing quality standards in 24 CFR § 882.109, and contains an appropriate number of bedrooms for the particular applicant's family size and composition.

f. The unit offered by the willing landlord is located outside an area where a reasonable African-American would perceive significant racial hostility.

g. There must be no legitimate basis for the class member to refuse the offered unit. Legitimate reasons to refuse an offer are limited to remoteness to jobs or day care and lack of adequate and feasible transportation. The burden is on the applicant to demonstrate that the proffered reason is legitimate. The special master, or some designated representative of the special master, shall make the initial determination as to whether the applicant has carried his or her burden in this regard.

8. HUD shall also receive credit for the creation of a desegregated housing opportunity, whenever a class member who has been provided with a desegregative housing certificate or housing voucher accepts an offer of a housing unit located in any non-minority census block in the class action area, or in any other non-minority area, but the unit was not obtained through a referral from the housing mobility service.

9. HUD shall receive credit for the creation of a desegregated housing opportunity, if a class member is referred by the mobility counseling service to a landlord willing to rent the class member, with or without the use of a Section 8 housing certificate or voucher, a suitable housing unit in a privately owned, HUD-assisted and/or HUD-subsidized housing development, or in a housing development assisted or subsidized by the Farmers Home Administration, provided that the offered housing unit meets the location requirements set forth in Paragraph II.7.d., above, and provided that the African-American occupancy of the project in which the unit is located does not exceed fifty percent (50%).

10. HUD shall also receive credit for the creation of a desegregated housing opportunity whenever a class member, with or without the use of Section 8 housing certificate or voucher, accepts an offer of a housing unit in a privately owned, HUD-assisted and/or HUD-subsidized housing development, or in a housing development assisted or subsidized by the Farmers Home Administration, where (i) the housing unit is located in any non-minority census block in the class action area, or in any other non-minority area, (ii) the African-American occupancy of the project in which the unit is located does not exceed fifty percent (50%) and (iii) the unit was not obtained through a referral from the housing mobility service.

11. The mobility services referred to above shall be provided by the Fair Housing Services Center, a private, non-profit organization to be established and funded by HUD for a five-year period, as set forth below.

12. The Fair Housing Services Center shall administer the desegregative Section 8 housing vouchers and certificates under contract with one or more PHAs.

III. Elimination or Reduction of Racially Identifiable Low-Rent Public Housing Projects

1. If the individual desegregation plan for a particular PHA does not require the use of any of the Waiting List Initiatives, that specific PHA shall continue to use a race-conscious tenant selection assignment plan in conformity with the requirements of Paragraph 2 of the Interim Injunction entered in this action on March 3, 1988.

2. Any particular Waiting List Initiative specified in an individual desegregation plan shall be fully implemented by the PHA within six months of the date of this judgment and decree. Any PHA that is required to implement a Waiting List Initiative shall also continue to use a race-conscious tenant selection assignment plan in conformity with the requirements of Paragraph 2 of the Interim Injunction entered in this action on March 3, 1988. HUD shall provide any and all assistance to the PHA necessary to implement the Waiting List Initiative, such as the drafting of detailed instructions to guide the PHA in the implementation of the Waiting List Initiative, and the preparation of interagency agreements required for the Cross-Listing Initiative, the Merged Waiting List Initiative, the Area-Wide Waiting List Initiative and the Housing Opportunities Waiting List Initiative.

3. If any Waiting List Initiative, such as the Affirmative Action Waiting List Initiative, employs race-conscious practices for the selection of tenants for assignment to a low-rent public housing project, an offer of alternative housing shall be made to any class member who would otherwise have been offered a unit in the project but for the need to

achieve a desired racial balance in the project within sixty days of the date on which the public housing unit in question became available for assignment.

a. Such an offer of alternative housing shall be made to a class member if (i) the class member has applied for low-rent public housing with the PHA operating the project; (ii) the class member meets all applicable eligibility and screening requirements for admission to public housing operated by the PHA; and (iii) and the class member would otherwise have been offered an available unit in the project but for the advancement of a non-class member applicant to the head of the waiting list for that unit under the terms of the Waiting List Initiative, *i.e.*, the class member held the highest position on the waiting list above the non-class member applicant whose position on the waiting list was advanced under the terms of the Waiting List Initiative. A non-class member applicant may not be advanced on a waiting list, unless it has been verified that the non-class member applicant meets all eligibility requirements and tenant selection criteria applicable to the low-rent public housing project.

b. In order to satisfy the requirements for an offer of alternative housing (i) the class member must be provided with a desegregative Section 8 housing voucher or housing certificate and (ii) all other requirements for the creation of a desegregated housing opportunity specified in Paragraph II.7., above, must be satisfied.

c. The public housing unit that otherwise would have been offered to the class member shall remain vacant pending receipt by the class member of an offer of alternative housing.

d. If the class member who would otherwise have been offered the public housing unit rejects an offer of alternative housing HUD shall, within seven days of such rejection, provide plaintiffs with a written notice stating the name of the applicant and stating the basis for HUD's determination that the applicant rejected the offer of a dwelling unit meeting the requirements for an offer of alternative housing.

e. The plaintiffs shall have seven days from the date of notice under the preceding subparagraph to submit to HUD, in writing, any objections plaintiffs may have to HUD's determination. If timely objections are submitted by the plaintiffs, the public housing unit shall remain vacant pending a decision by the special master. Except as provided in Paragraph III.3.b. (referring to Paragraph II.7.g.), above, in any such proceeding, HUD shall bear the burden of proving that the applicant has rejected an offer of alternative housing. If no objection is made, or, upon objection, the special master determines that an offer of alternative housing was received by the class member who would otherwise have been offered the public housing unit, the class member shall be placed on the waiting list in the position occupied by the non-class member advanced in accordance with the Waiting List Initiative, and the non-class member applicant advanced under the Waiting List Initiative shall be assigned to the public housing unit. Either party dissatisfied with the decision of the special master may seek review of that decision by this court within seven days of the special master's decision.

f. If a class member rejects an offer of alternative housing after previously receiving an offer of alternative housing and rejecting such offer, the special master shall determine whether the applicant will again be placed on the waiting list in the position occupied by the advanced non-class member applicant or will receive different consideration in light of the unusual circumstances. Either party dissatisfied with the decision of the special master may seek review of that decision by this court, within seven days of the special master's decision.

g. If no offer of alternative housing is made within sixty days, HUD shall notify the special master, within seven days, of the circumstances preventing an offer of alternative housing. The special master shall investigate the conditions already causing HUD's failure to make an offer of alternative housing. If the special master determines that HUD is acting in good faith, the class member shall be provided a desegregative housing certificate or voucher which may be used without the geographic restriction described in Paragraph II.7.a., above, within the time period described in 24 C.F.R. § 882.209(d). A finding that HUD acted in bad faith shall be evidence to be considered in relation to any motion to hold HUD in contempt.

4. HUD shall provide a section 8 existing housing voucher to the non-class member applicant who would otherwise have been offered an available public housing unit but for the advancement of a class member to the head of the waiting list for that unit under the terms of a Waiting List Initiative, *i.e.*, the non-class member applicant who held the highest position on the waiting list above the class member applicant whose position on the waiting list was advanced under the terms of the Waiting List Initiative.

5. In determining whether to require a PHA to use the Affirmative Action Waiting List Initiative, or any other race conscious tenant selection and assignment plan, for a particular low-rent public housing project, HUD shall not consider the impact of the integration of the project on the racial composition of the neighborhood surrounding that project.

IV. Fair Housing Services Center

1. HUD shall establish a Fair Housing Services Center (''FHSC''), the functions of which must include providing assistance to class members in locating and obtaining affordable desegregated housing in areas where they choose and, additionally, providing class members with fair housing counseling services.

2. The FHSC shall be operated by a private, non-profit organization. HUD shall provide funding to the FHSC in an amount no less than $500,000 per year for a period of five years.

3. Within sixty days of the date of the entry of this judgment and decree, HUD shall serve upon the plaintiffs, and submit for approval of the court, a proposed Request for Proposals (''RFP''), inviting private, non-profit organizations to apply for a contract with HUD to operate the FHSC. The plaintiffs shall have ten days from the date of service within which to file objections to the proposed RFP. If such objections are filed, the court shall conduct such proceedings as are required to resolve the objections.

4. Upon approval of the RFP by the court, HUD shall publish the RFP in the Commerce Business Daily. Within 120 days of the date of publication of the RFP, HUD shall make its selection of the organization to operate the FHSC.

5. The FHSC shall provide the following services:

a. pre-screen all clients of the FHSC who have not already been screened by a PHA, to document each client's ability and willingness to comply with an acceptable lease and HUD program requirements;

b. provide information and counseling with respect to housing opportunities to class members;

c. monitor the compliance of the providers of low-income housing in the class action area (low-income public housing and assisted housing) with the fair housing laws and the requirements placed upon the providers under the Comprehensive Plan and the individual desegregation plans;

d. encourage and assist in the development of desegregative housing opportunities, including outreach to private landlords in non-minority areas, as well as counseling and referral

services to Section 8 existing housing tenants and applicants who wish to utilize their Section 8 certificates or housing vouchers in a manner furthering desegregation;

e. encourage and assist class members to make desegregative moves within the low-income housing program and to privately owned assisted housing programs;

f. administer the desegregative housing certificates and vouchers to be provided by HUD under contract with one or more PHSs;

g. give each class member written notice, every six months, in a form and distribution method to be approved by HUD, of all HUD-assisted and/or HUD-subsidized low-income housing developments in the housing markets where the class member resides that offer the class members a desegregative housing opportunity, provide notice of the full address, telephone number, and name of the person responsible for accepting applications for the development, a short description of the type of housing offered by the development, and the general eligibility requirements for the development.

6. The plaintiffs may seek review, in this court, of HUD's final selection of the organization to operate the FHSC. Such review shall be in accordance with the standards and procedures for judicial review set forth in the Administrative Procedure Act, 5 U.S.C. §§ 701, *et seq.*

V. Racially Hostile Sites

1. HUD shall utilize its statutory and regulatory authority to proceed against any resident who acts to deprive any other resident of his or her civil rights under the United States Constitution or applicable civil rights statutes.

2. HUD shall assist municipal leaders, including, but not limited to, the city's mayor and its city counsel, in undertaking actions to address hostility including, but not limited to, supplying trained security officers to protect the physical safety of African-American residents when necessary.

3. Within sixty days of issuance of this judgment and decree, HUD shall determine in which localities class participation is limited because of racial hostility such that it is unlikely class members will actually use the existing public housing.

4. HUD shall develop a supplemental desegregation plan for each site deemed by HUD to be racially hostile. The supplemental plan shall examine all avenues available to HUD effectively to counterbalance racial hostility, thereby facilitating class participation and the implementation of the individual desegregation plans and this judgment and decree. Such supplemental plan shall be submitted to the special master for his approval within six months of the designation of a site as racially hostile.

VI. Unitary Status

1. When HUD and each PHA have satisfied the requirements as provided for in this judgment and decree and no racially identifiable low-rent public housing projects exist within the class action counties, HUD may apply to the court for a declaration of unitary status because of the elimination of all vestiges of discrimination attributable to HUD. *See Hills* v. *Gautreaux,* 425 U.S. 284, 297 (1976). A project shall be regarded as non-racially identifiable if less than seventy-five percent (75%) of the occupants of the project are members of the same race.

2. Upon issuance by the court of a declaration of unitary status, judicial supervision pursuant to this judgment and decree, or any other order entered in this case, of HUD's activities shall terminate.

3. Ten years after the date of this judgment and decree, if the court's jurisdiction has not been sooner terminated, the court shall determine whether its jurisdiction over HUD's actions should be continued or terminated. The court shall extend its jurisdiction over HUD if it determines that any of the specific obligations to be performed under this judgment and decree have not been accomplished within that time period. If the court extends its jurisdiction for this reason, its jurisdiction shall end upon fulfillment of those specific obligations.

[FR Doc. 96–24506 Filed 9–24–96; 8:45 am]

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Federal Register

Wednesday
September 25, 1996

Part III

Department of Labor

Employment and Training Administration

Job Training Partnership Act: Title III National Reserve Grants—Application Procedures; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Title III National Reserve Grants—Application Procedures

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of procedures for grant applications.

SUMMARY: The Employment and Training Administration of the U.S. Department of Labor (Department or DOL) is announcing policies and procedures for accessing funds to implement programs, pursuant to sections 323(a), 323(b), 325, 325A and 326 of the Job Training Partnership Act (the Act or JTPA). Applications prepared and submitted pursuant to these guidelines and received at the address below will be considered. These guidelines supersede guidelines for National Reserve Account grants previously published in the Federal Register on February 7, 1992, July 9, 1992, and July 19, 1993. Grant awards will be made only to the extent that funds remain available.

DATES: The grant policies and procedures described in these guidelines shall be effective immediately, and shall remain in effect until further notice. Funds are available for obligation by the Secretary of Labor (the Secretary) under Sections 302(a)(2) and 323 of the JTPA. Applications will be accepted on an ongoing basis as the need for funds arises at the State and local level. Applicants are strongly encouraged to submit fully documented applications as early as possible following notice of the dislocation event.

ADDRESSES: An original plus one copy of the application must be mailed or hand delivered to: Office of Grants and Contracts Management, Division of Acquisition and Assistance, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW, Washington, DC 20210; Attention: James C. DeLuca, Grant Officer. The application must be paginated and unbound. A copy of the application must simultaneously be mailed or delivered to the appropriate Regional Office(s) of the Employment and Training Administration. [A list of the Regional Offices is provided in Appendix A.] Emergency applications may be sent to the Grant Officer by electronic transmission (FAX No.: 202/219–8739) with a hard copy followup within one day of the transmission, but the Department prefers that an applicant use an overnight mail service.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Smith, Chief, Division of Program Implementation, Office of Worker Retaining and Adjustment Programs. Telephone: 202/219–5577. (This is not a toll free number). Application packages and instructions and technical assistance on application requirements are available from Regional Offices of the Employment and Training Administration (see Appendix A) and from the Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: The Department announces the availability of funds for grants to provide training, adjustment assistance, and employment services for dislocated workers, as defined in Sections 301(a), 314(h)(1), 325 (a) and (e), 325A (b) and (f), and 326(a)(1) of JTPA.

The application procedures, selection criteria, and approval process contained in this notice are issued pursuant to the JTPA regulations at 20 CFR 631.61.

This program announcement consists of five parts and five appendices:

- Part I provides background and basic DOL policies and emphases for discretionary grants under sections 323, 325, 325A and 326 of the Act;
- Part II describes specific program and administrative requirements that will apply to all grant awards;
- Part III describes basic grant application submission requirements and the criteria that will be used to evaluate applications for funding;
- Part IV describes responsibilities for oversight and performance management of awarded grants; and
- Part V describes the circumstances requiring and approval criteria for grant modification requests.

The appendices include directories of ETA Regional Offices and State Offices, copies of required assurances and certifications, and definitions of key terms.

Copies of complete application packages and instructions are available from ETA Regional Offices (see Appendix A) and State Dislocated Worker Units (see Appendix C).

The JTPA Title III program is listed in the *Catalogue of Federal Domestic Assistance* at No. 17–246 ''Employment and Training Assistance—Dislocated Workers (JTPA Title III Programs).''

Signed in Washington, DC on this 19th day of September, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor.

Part I

A. Background

The guidelines for the submission, award and management of JTPA Title III National Reserve Account (NRA) grants are designed and intended to foster efficient and responsive disbursement, and effective use of NRA funds. A primary objective of these guidelines is to establish a process which results in timely assistance to eligible dislocation events while supporting accomplishment of the quality service principles which have been defined by DOL for its customers. These principles are:

- Early intervention and contact with affected workers;
- Effective planning which mobilizes a full range of services and resources;
- Flexible, individualized service approaches which are tailored to the needs of the workers and circumstances of the dislocation event; and
- Service-delivery that achieves quality outcomes for the affected workers.

To ensure that NRA grant awards achieve these service principles, the NRA guidelines were developed by a Federal- State-local workgroup of representatives from each of the partner organizations involved in the implementation and management of NRA projects. The workgroup focused on developing guidelines which reflect the key principles of quality management: strategic planning, customer-driven quality, strong processes and continuous improvement, and management by facts/information.

B. DOL Policies and Emphases

1. DOL is establishing four primary objectives regarding the use of NRA funds:

- Effective use and integration of NRA funds with other available resources (e.g., Title III formula, Pell grants, Trade Adjustment Assistance);
- Targeting resources to need;
- Providing quality services and achieving quality outcomes for customers;
- Timely submission and processing of applications and implementation of services.

To support these objectives, DOL is committing to a 45 (calendar) day turnaround between the receipt of a complete application and a funding decision by the Secretary. The review and approval process presumes an

active review role by the State JTPA entity, including the Dislocated Worker Unit (DWU), to ensure the submission of complete and responsive applications. DOL expects that the State will not require more than 15 (calendar) days following its receipt of a complete application to review and transmit that application to the Grant Officer and the ETA Regional Office.

2. DOL is implementing two policies designed to support more flexible funding of projects and more timely delivery of services to eligible workers:

a. Grant Officer authority to approve, in appropriate cases, the use of grant funds to pay for pre-award costs of reemployment and retraining services specifically identified in the grant award document that were or are being provided to members of the eligible target group; and

b. Incremental or phased funding where appropriate.

These policies are intended to support a quality-based approach to the design and delivery of services to eligible dislocated workers. Quality improvements in services and outcomes achieved for dislocated workers are an important goal of NRA grant projects. The appropriateness of these funding options will be evaluated on a case-by-case basis.

In general, authorization of pre-award costs will only occur in exceptional circumstances where: (1) It was necessary for the State or substate to provide previously committed funds to serve the immediate needs of the eligible target group prior to the date of the grant award; and (2) it can be demonstrated that the needed action was due to an unanticipated or unusual circumstance and not as a result of untimely planning or submission of the funding request. Funds awarded in one Program Year cannot be used to pay for the costs of services incurred in a prior Program Year.

3. DOL expects that applications for NRA grant funds will flow from effective rapid response and early intervention activities, a significant State and local project planning effort, and will ensure an integration of all available resources (e.g., formula, discretionary, other public and private) to support the project plan. Applicants are required to provide rapid response-type, early intervention services in conjunction with any dislocation event for which NRA grant assistance is provided.

4. Application requirements are focused more on the use of quality participant service and management processes, and less on detailed operational planning decisions.

Applicants are expected to use NRA grant funds to implement innovative projects which achieve high quality services and outcomes for the dislocated workers who are served. Customer satisfaction measurement and continuous improvement will be required elements in each NRA grant project.

In summary, the guidelines provide more flexibility, but increase expectations regarding the linkage between discretionary grants and: rapid response and project planning activities; the mobilization and use of all available resources; and the implementation of quality service strategies and management processes.

Part II

Under Section 322(a), the Secretary has the responsibility to target resources efficiently to areas of most need, to encourage a rapid response to economic dislocations, and to promote the effective use of funds. In addition, Title III national reserve funds should provide a model for promoting higher quality services and outcomes in all dislocated worker programs.

A. Policies and Requirements Governing the Use of Title III National Reserve (NRA) Funds

1. All projects and activities funded shall be subject to the Act, the JTPA regulations, the requirements contained in the application instructions, and the Grant Officer's award document(s) and any subsequent grant amendment(s).

2. Grant applications should be an outgrowth of an effective early intervention process. Applications for NRA funds should be the result of a planning process which has been activated through State rapid response and, as appropriate, an early intervention assistance process that may include the use of formula funds to initiate basic readjustment, retraining and supportive services. In cases where formula funds have been used to provide services (excluding rapid response, which is the State's responsibility) to the eligible target group prior to the date of grant award and the availability of formula funds in the State is limited, the Grant Officer may authorize the use of grant funds to pay for the costs of these services.

3. National reserve funds should supplement and expand the State and substate capability to respond effectively to dislocation events. NRA projects should generally be funded from multiple sources; and NRA funds should be used both to serve more dislocated workers and to achieve higher quality services and outcomes than may be possible through the formula funded program alone. States and substate areas are expected to make maximum use of funds provided for the purpose of serving eligible dislocated workers. Requests for NRA funds, therefore, will be evaluated in terms of the policy delineated in Training and Employment Guidance Letter (TEGL) 7–95, and any subsequent modifications thereto, regarding intertitle transfers of funds under JTPA, as authorized by the FY 1996 Omnibus Appropriations Act.

Grantees will be expected to make a maximum effort to assist each eligible participant to apply and qualify for available sources of student financial assistance, consistent with the provisions of § 627.220 of the JTPA Regulations. It is important to note that student financial assistance not only provides more resources to the program, but also provides more resources, and expands the options, to the participant.

When an employer or other entity offers a tuition payment or tuition reimbursement program for the eligible workers, the grantee and/or project operator shall work with the employer/entity to establish an appropriate process for accessing the funds to pay for the costs of worker training.

4. NRA funded projects should support the key ETA service goals and be designed around principles that have been shown to be effective in achieving positive outcomes for dislocated workers (e.g., transition service centers, mechanisms for active employer and worker input in design and operation of the project, methods of continuous improvement based on customer feedback).

5. The NRA grant process should recognize and provide a means for responding to the fluidity of dislocation events. The Secretary may use an incremental funding approach to respond to dislocation events as determined by need. Incremental funding of a grant can be at the request of the applicant or at the discretion of the Secretary.

B. Eligible Circumstances for Use of NRA Funds

Services of the type described in JTPA section 314 may be provided with national reserve funds in the following circumstances:

- Plant closures and substantial layoffs within a State when the workers are not expected to return to their previous industry or occupation of employment;
- Dislocations resulting from natural disasters and other devastating events;
- Plant closures and substantial layoffs that occur on a multi-state basis;

- Substantial layoffs resulting from federal government actions;
- Provision of additional financial assistance to programs and activities being operated by State and substate grantees under Part A of Title III of JTPA, where economic conditions have sufficiently changed to warrant an increase in the area's formula allocation.

C. Participant Eligibility

Individuals who meet the eligibility criteria defined in sections 301(a), 314(h)(1), 325(a) and (e), 325A(b) and (f), or 326(a)(1) of JTPA, as amended by the Defense Authorization Act of 1995), shall be eligible for assistance through national reserve grants.

D. Allowable Activities and Services

NRA funds may be used to provide services of the type described in sections 314 and 325A(f) of the Act.

E. Required Services

Each project funded with national reserve funds—except applications for DISASTER projects and ADDITIONAL FINANCIAL ASSISTANCE (AFA)—must provide the following activities and services prior to or in conjunction with project implementation:

1. Contact with employers and employee representatives affected by a dislocation or potential dislocation of individuals, preferably not later than 2 business days after notification of such dislocation.

2. Establishment of a mechanism for involving representatives of the affected workers, the employer and the community in planning the project.

3. Collection of information on affected individuals to determine the approximate number of such individuals in need of assistance and interested in receiving services. Such information should include items such as age ranges, education and skills, job tenure, and wage ranges to allow preliminary assessments of likelihood to seek and obtain employment in the local labor market.

4. As appropriate, arranging for orientation sessions, counseling services, and early intervention services for affected individuals.

These services must be provided as a condition for award of the grant. These services should be provided by, under the direction of, or in collaboration with the State through its Dislocated Worker Unit.

F. Performance Outcomes

Each NRA grant project will be expected to achieve the end-of-project performance goals which are established by ETA for the applicable program year. For PY 1996, the performance goals are:

1. Entered Employment Rate = 75.0%
2. Wage Replacement Rate for Entered Employments = 90.0%

Note: The ''wage replacement rate'' is defined in Appendix E.

3. Customer satisfaction rating of ''extremely'' or ''very satisfied'' with the services received = 70.0%

Note: Each grantee will be required to establish or use a system of customer satisfaction measurement and continuous improvement in conjunction with the NRA project. The project-related costs of operating this system are chargeable to the grant under the ''Administration'' cost category.

G. Administrative Requirements

1. General

Grantee organizations will be subject to the JTPA law, regulations, these guidelines, the terms and conditions of the grant and any subsequent modifications, to applicable Federal laws (including provisions in appropriations law), and any applicable requirements listed below—

a. State and local Governments (except for JTPA State grant recipients that receive national reserve grant funds under the JTPA State Grant Agreement ''block grant'')—OMB Circular A–87 (cost principles), and 29 CFR part 97 (Uniform Administrative Requirements for Grants with State and Local Governments).

b. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

d. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements). In addition, the audit requirements at 20 CFR 627.480 shall apply to commercial recipients.

2. Financial Management

a. Cost limitations under section 315 of JTPA and 20 CFR 631.14 apply to national reserve grants, except where justification for adjusting these limitations is included in the grant application, or subsequent grant modification requests, and approved by the Grant Officer.

b. The limitation on administrative costs shall apply to the grant award, exclusive of funds expended for needs-related payments. This limitation applies to the total expenditures for program administration including any funds reserved by the State where it is the applicant but not the project operator. Any costs associated with administering a system of needs-related payments shall be separately identified in the application budget and justified. The Grant Officer may approve additional costs for the administration of needs-related payments, based on information provided by the applicant. For National Reserve Account grants, cost limitations will be based on actual end-of-project expenditures.

c. NRA grant applicants should not automatically budget 15 percent of the award amount toward administration. All proposed costs in the budget must be reflected as either direct charges to specific budget line items or an indirect cost. The amount planned to be used for administration and the specific purposes for which it will be used must be specified in the budget.

d. If an indirect cost is used, a copy of the most recent approval document from the cognizant federal agency shall be included in the application.

e. Profits or fees are not an allowable expense for grantee organizations. Profits or fees are allowable for profit organizations which are subrecipients or project operators, subject to the provisions of § 627.420(e)(3) of the JTPA Regulations. However, no profits or fees will be allowed if the subrecipient or service provider is the employer, or a division or subsidiary of the employer, of the dislocated workers.

f. National reserve grant funds which have been expended for training prior to certification of Trade Adjustment Assistance (TAA) eligibility do not have to be reimbursed when TAA funds become available to cover the balance of the training. The source of funds used to pay these costs will be the decision of the grantee, in conformance with provisions of the Trade Act.

g. Unless otherwise waived by the Grant Officer, national reserve grant funds cannot be used to pay for the full cost of furniture or equipment that has a useful life which is longer than the grant period. Other funds should be used, as needed, for such purchases and an appropriate usage/depreciation charge should be applied to the grant.

3. Audit

Grantee organizations shall be responsible for complying with the audit requirements defined in § 627.480 of the JTPA Regulations (as published in the September 2, 1994, Federal Register).

4. Reporting Requirements

a. The grantee will be required to comply with two reporting requirements related to each NRA grant project:

(1) Applicants should contact the appropriate Regional Office of the Employment and Training Administration (see Appendix A) for currently applicable reporting requirements.

One signed original and one copy of applicable reports shall be provided to: U.S. Department of Labor, ETA, Office of the Comptroller, Division of Accounting, Room C–5325, 200 Constitution Ave., NW, Washington, DC 20210.

One copy shall also be provided to the ETA Regional Office, ATTN: Regional Administrator.

(2) The grantee shall provide information required on the Standardized Program Information Record (SPIR) (OMB No. 1205–0321).

b. The grantee will be requested to provide the following additional performance information to the Grant Officer and to the Regional Office:

(1) One copy each of its periodic performance management reports on the project, consistent with the performance management procedures which are described in the approved grant.

These reports should be provided no later than 30 days after the end of the report period.

At a minimum, the grantee's performance management procedures will be expected to address how the grantee will measure progress and manage performance against the project's objectives as defined in the approved Implementation Schedule and the Cumulative Quarterly Expenditure Plan.

(2) An End-of-Project Report providing a summary analysis of the accomplishments of the project in relation to its goals, strengths and weaknesses in project design and implementation, and suggestions for improvements in the NRA grants management process. This report should be provided no later than 90 days after the end date of the project.

H. State Review

1. Responsibility

Where the applicant is an entity other than the State JTPA administrative entity, the State, in its role of managing the use of Title III resources in the State to provide services to eligible dislocated workers, will be expected to provide comments on the application. The JTPA Liaison shall submit with each application for NRA grant funds a letter providing his/her comments on the application. The applicant will submit the application to the State JTPA administrative entity for review (see Appendix B: List of State JTPA Liaisons and Appendix C: List of State Dislocated Worker Units). In the case of a non-State entity submitting an application for a multi-State project, the applicant will submit the application to the State JTPA administrative entity in each state in which the project will operate.

The State's review and comments should include:

- A determination that the application is complete and responsive to the guidelines (a completeness review checklist is included in Appendix G);
- An assessment of the responsiveness of the project plan to the dislocation event;
- A verification that the applicant has the ability to satisfactorily undertake the proposed project;
- A certification that available State and local resources are inadequate to meet the requirements of the proposed project; and
- A certification that the required services identified in Section II.C have been or are being provided.

The State's review and determination letter must be included in the application package.

Note: This requirement shall not apply to applications submitted by eligible Native American grantees.

2. Timing

The State should, and is strongly urged to complete the review and forward the application to the Grant Officer, with a copy to the appropriate Regional Office, within 15 calendar days after receiving a complete application.

I. Secretary's Rights Reserved

1. The Secretary reserves the right to distribute a portion of national reserve funds in a manner other than that provided by this notice, consistent with the JTPA, and taking into consideration special circumstances and unique needs which may arise. This may include the funding of projects through a separate competitive grant process.

2. The Secretary also reserves the right to fund individual projects on an incremental basis where the Department determines that such an action would result in the most effective use of available resources.

3. If the Department receives an insufficient number of applications which are of acceptable quality, and which meet the guidelines and selection criteria contained in this notice, to fully and effectively use the funds in the national reserve account, the Department will take whatever action it deems necessary and appropriate, consistent with the Act and the regulations. Unobligated funds remaining when the Secretary's obligational authority expires will be returned to the Treasury.

Part III

A. Types of Grant Applications for NRA Funds

There are four types of applications which may be submitted for Title III NRA funds:

- A standard or REGULAR application;
- An application for a DISASTER assistance project;
- An application for a MULTI-STATE project where the applicant is not a State entity;
- An application for ADDITIONAL FINANCIAL ASSISTANCE (AFA).

A REGULAR or MULTI-STATE application may be submitted to operate a project in accordance with Section 323, Section 325 (Defense Conversion), Section 325A (Defense Diversification), Section 326 of the Act (Clean Air Employment Transition Assistance), or for NAFTA-impacted workers. AFA projects may only be operated in accordance with Section 323; and DISASTER projects may only be operated in accordance with Sections 323 and 324.

B. Eligible Applicants for NRA Grants

Eligible applicants for NRA grants include States, Title III substate grantees, employers, representatives of employees, Native American tribal entities eligible to receive JTPA grant funds pursuant to section 401 of JTPA, and other entities which are certified by the State(s) as qualified project operators. Eligibility of specific types of entities for the various types of NRA grants is more completely described in the grant application package.

C. Grant Application Submission Requirements

To be considered for funding, an application will need to include the information identified in this section. Specific requirements for each type of application are fully described in the application package available through ETA Regional Offices and State Dislocated Worker Units.

If an applicant plans to operate a project through more than one project operator (see definitions in Appendix E), each project operator shall be identified and a separate Budget and Implementation Schedule provided. Where appropriate, description of separate target groups and service

processes for each project operator shall also be provided. In all cases, the applicant must also include a summary Budget and Implementation Schedule for the entire project.

1. State's Review and Comment Letter.—A letter from the State consistent with the provisions of Section II.H.

2. Transmittal Letter.—A letter requesting national reserve funds on behalf of the applicant, signed by the Governor (or his/her authorized JTPA signatory official), or by the applicant's authorized signatory must accompany the application. [Note: Where the applicant is the State, the Review and Comment and Transmittal requirements may be covered in one letter.]

3. Standard Form (SF 424).—Each application must include a completed SF 424, Application for Federal Domestic Assistance (Catalogue No. 17.246) with an original signature by the authorized signatory.

4. Assurances and Certifications.—Each application must include an original signed copy, by the authorized signatory, of the ''Assurances and Certifications for National Reserve Grants'' [See Appendix D]. Non-State grantees will be required to complete additional assurances and certifications, where applicable.

5. Synopsis of the Project.—Each application must include a completed ''Project Synopsis,'' which identifies the applicant, the target group, the amount of requested funds, the number of planned participants, and the primary occupations targeted for training and job placement.

6. Project Narrative.—The narrative portion of the application, excluding attachments, should not exceed thirty (30) double-spaced pages, typewritten on one side of the paper only, and paginated. The narrative must specifically address each of the elements listed below. Use of tables and charts to summarize relevant data and information is strongly encouraged. However, the applicant must provide sufficient narrative interpretations of data summarized in any tables and charts to support the need for the project and the effectiveness of the planned service strategy.

The project narrative shall include:

a. *Required Services.* A description of the specific actions which have been completed regarding the required services described in section II.E of these guidelines.

If all required services have not been completed at the time of submitting the application, a timetable for completing them must be included in the application.

b. *Analysis of Target Group.* (1) A description of how the number of affected workers which are expected to participate in the program was determined.

(2) Where layoffs have occurred more than 4 months prior to the submittal of the application to the State (or DOL if the State is the project operator), the application shall describe the methods which are being and will be used to maintain continuing contact with the workers.

(3) Identify if all or part of the dislocation is potentially trade-impacted. Indicate the status of any NAFTA and/or TAA petitions which have been filed or planned to be filed in conjunction with this dislocation.

(4) If the proposed target group includes workers dislocated as a result of the relocation of a company facility or the transfer of a company operation to another location, the city and State to which the relocation or transfer is being made shall be identified.

Note: This information will not be used to evaluate the application, but is being requested to help the Department enforce section 141(c) of the Act.

c. *Analysis of Labor Market Conditions.* A brief description of local labor market conditions, including any other job markets in which job placement is an appropriate option for the affected workers. The description must address current and expected labor supply and demand relationships as they relate to the reemployment and wage recovery potential for the target group of workers.

d. *Description of Client Service Process.* A description of the client service process to be used for effective training and job placement of the population to be served.

e. *Needs-Related Payments.* A description of how the estimate of the funds required for needs-related payments to the participants to be served through the project was developed. The description should include an identification of the estimated number of participants who will need or be eligible for needs-related payments, and the applicant's policies for payment of needs-related payments.

f. *Relocation/Out-of-Area Job Search Assistance.* If relocation and/or out-of-area job search assistance are to be provided, a description of the circumstances that make these appropriate services for the target group.

g. *Management Process.* A description of the core management process and procedures to be used by the project operator in implementing the project and in managing and controlling project performance and expenditures.

h. *Coordination and Linkages.* (1) For States and Title III substate grantee applicants, a description only of coordination relationships which go beyond those that are described in the Title III State or substate plan.

(2) For other applicants, a signed statement from the State Dislocated Worker Unit and/or the applicable Title III substate grantee that the level of coordination relationships which have been, or are being developed is adequate.

(i) *Financial and Management Capabilities.* For applicants who are neither the State nor a Title III substate grantee, a description of financial and management capabilities of the applicant.

7. Implementation Plan.—The application shall include the following implementation information:

a. An identification of activities, timeframes and responsibilities for implementing the project in a timely manner after award. The activities must include organization and opening of service facilities, staffing, and the execution of agreements with key service providers.

b. A quarterly implementation schedule showing the number of participants, enrollments in training, participants receiving needs-related payments, terminations, and entered employments.

8. Project Budget.—The application must include a budget for all costs required to implement the project design effectively, as described in the preceding sections.

a. *Cost Classification.* Costs must be classified under the following cost categories: Administration, Basic Readjustment Services, Retraining, Supportive Services and Needs-Related Payments, as defined in 20 CFR 631.13.

b. *Budget Forms.* The application shall include the following completed budget information:

(1) Project Line Item Budget, which shall reflect the total costs required to implement the project design that are to be paid with NRA grant funds.

(2) Service Plan Matrix, which shall identify the specific activities and services in the project design and the planned funding sources for each.

(3) Planned Cumulative Quarterly Expenditures of NRA Grant Funds, which shall provide a quarterly expenditure plan for the use of NRA grant funds, identified by cost category.

Collectively, these budget forms present a total cost picture to implement the project and indicate how NRA funds

will be integrated with other available sources of funds.

c. *Use of Grant Funds for Pre-Award Costs.* If the applicant is requesting approval from the Grant Officer for use of grant funds to pay for costs of providing services to the target group which have been incurred prior to issuance of the Notice of Obligation (NOO), the applicant shall submit two sets of the required budget forms: one which includes requested pre-award costs, and one which does not include these costs. The applicant must provide a detailed explanation of why grant funds are needed to cover these costs. If the Grant Officer approves the request, such costs will be specifically identified in the grant award document. If the applicant does not request and the Grant Officer does not approve the use of grant funds for such costs, then grant funds cannot be used to pay for any such costs.

d. *Justification for Requested NRA Funds.* The applicant must provide information which justifies the level of requested NRA funds in relation to other available Title III funds in the State. The information must include an identification of available formula and NRA funds, actual obligations and expenditures, and the projected need for unexpended funds. Available Title III funds in the State shall include funds allotted by formula at the beginning of the Program Year plus any carryover funds from previous PYs. Available Title III funds shall include any Title III funds which have been transferred to other Titles under the provisions of TEGL 7–95, and any subsequent modifications thereto, and which remain unexpended.

e. *Justification for Project Design Performance.* The applicant must provide information which compares the planned design and performance for the project with performance information for the formula program for the most recently completed Program Year in the substate area, or State if appropriate, in which the project is to be implemented. If the planned performance for this project varies from the related experience on the formula program by more than ten percent (10%), the applicant must provide an explanation, including supporting documentation, of the factors which are causing the differences in performance. Performance factors to be addressed must include: cost per participant, entered employment rate, cost per entered employment, average wage at placement, average duration of participation, and maximum amounts of needs-related payments which can be paid to an individual participant.

9. Description of State's Administrative Responsibilities.—The application shall include an identification of the individual(s) within the State administrative entity who will be responsible for the oversight activities, as described in Part IV of these guidelines.

The State is expected to perform the following core responsibilities related to each NRA project for which the State is the grantee:

- Maintain participant and financial information and submit required reports;
- Ensure compliance of project operations with applicable statutory and regulatory requirements;
- Carry out the required project site visits;
- Provide needed technical assistance to the project operator(s).

If the State is performing only these core responsibilities in conjunction with the project, it may receive no more than 1.5% of the approved grant funds, up to a maximum amount of $25,000.

If the State is performing more than the core administrative responsibilities and/or wants to request more than $25,000 in NRA grant funds for State-level administration, it must include in the application:

a. A detailed description of the additional administrative responsibilities to be performed and a timetable for undertaking and completing them;

b. A line-item budget identifying the costs of the State-level administrative responsibilities;

c. An explanation of why these responsibilities are more appropriately performed at the State level instead of by the project operator;

d. A certification that State formula funds are not available to cover the costs;

e. A signed letter from the project operator(s) commenting on the proposed plan for performing project administrative functions.

10. Review and Comment.—Each application shall include documentation of the following review and comment requirements:

a. *Substate Grantees.* The application must include letters from the Governor (or his/her designated signatory official for JTPA) and each appropriate JTPA Title III substate grantee indicating that they have been provided an opportunity to review and comment on the application. Each letter shall provide a description of funding, services and/or assistance to be provided to the project.

b. *Labor Organizations.* Each application where a substantial number (20% or more) of the affected workers are represented by a labor organization(s) must provide documentation of full consultation with each appropriate local labor organization in the development of the project design.

Each application shall describe the procedure which has been or will be used to consult with any labor organization which represents a substantial number of the workers employed in the local labor market in occupations in which participants are being trained through the proposed project.

D. Application Review Criteria

1. Overall Considerations. To be considered, the application must demonstrate that the proposed project meets the purpose of and is consistent with the Act and regulations; and provides all the information required by these guidelines. Applications which are not complete in accordance with the requirements defined in these guidelines will not be evaluated for funding until all required information and documentation is provided.

2. Specific Evaluation Criteria. The following specific criteria shall apply to the evaluation of complete applications:

a. *Target Group.* The extent to which the application identifies an eligible target group and provides a reasonable estimate of the portion of the total eligible group to be assisted through the project, based on available information.

b. *Need for NRA Funds.* The extent to which an effort has been made to access other available federal, State and local resources to finance the project and the request for NRA funds is supported by available information on resources and resource utilization.

c. *Management Plan.* Extent to which an adequate process and plan is in effect to deliver the required services, and the applicant has described appropriate management processes to guide and control project implementation.

d. *Participant Service Plan.* Extent to which the described participant service process is responsive to the dislocation circumstances and the ETA customer service principles; and the Implementation Plan provides a timely response to the dislocation(s).

e. *Reasonableness of Proposed Costs.* Extent to which proposed cost items relate to the service plan and that cost levels are appropriate given experience on other projects in the same service area, or on information provided in the application.

These criteria will be used to develop a recommendation on each application regarding fundability (YES/NO),

funding level, and funding method (e.g., full funding, incremental funding, incremental release of funds).

Part IV

A. Performance Management/Oversight Requirements

There will be a minimum of two onsite reviews of each NRA grant project: one within 90 days after grant award; a second at approximately the midpoint of the grant period or six months after the project begins enrolling participants (whichever comes first). Additional onsite reviews may be conducted based on the complexity, duration and/or performance of the project, and/or recommendations from either of the two required reviews.

1. 90-Day Review

The purpose of this review is to verify that the required services have been or are being provided; the implementation actions regarding facilities, staffing, and project operator agreements have been completed; and that the core management and participant service processes are being planned and implemented appropriately.

This review must be completed no later than the end of the 4th month following grant award.

2. Midpoint Review

The purpose of this review is to assess the effectiveness of the participant service process and the core service elements of outreach, recruitment, eligibility; assessment and service planning; referral to services; and job development. This review will also analyze the approach to collecting and using customer feedback information.

Although both the 90 day and the midpoint reviews will, as a matter of course, look at compliance issues, the focus is on ensuring that critical elements are in place to be able to accomplish the project's objectives and effectively use the grant funds which have been awarded.

B. Performance/Oversight Responsibilities

The States and ETA Regional Offices will have primary responsibility for the onsite reviews in cases where the project operator is an entity other than the State. The Regional Office will be responsible for the onsite reviews of all projects in which the grantee is a non-JTPA entity, or in which the State is the project operator.

In cases in which the State is the grantee but not the project operator, the State will have the primary responsibility for conducting the 90 day review. The midpoint review of such projects will be jointly conducted by the State and the Regional Office. National Office staff will participate in midpoint reviews of selected large and/or complex projects.

For both 90 day and midpoint reviews, a summary report from the site review shall be submitted to the Title III Program Office, ATTN: Chief of the Division of Program Implementation and to the ETA Regional Administrator, no later than 30 (calendar) days after the review is completed.

A copy of the report shall be provided to the State and to the grantee (if other than the State) for follow-up.

C. State Administration

States are expected to perform the following core responsibilities related to NRA projects in which the State is the grantee:

- Maintenance of participant and financial information and submission of required reports;
- Ensure compliance of project operations with applicable statutory and regulatory requirements;
- Provide needed technical assistance.

If this is the limit of the State's role on the project, the State is playing a ''pass-through'' administrative role and is subject to the following limit on the State's share of administrative costs which can be charged to the project: 1.5% of the grant award up to a maximum of $25,000. As described in section III.C.9 of these guidelines, the State may request a higher amount for State administration, but must provide a detailed justification.

Part V

A. Circumstances Requiring a Grant Modification Request

In general, a grant modification request will be required when circumstances change to the extent that:

- Actual end-of-project performance is expected to vary by more than 15% from plan regarding: total participants, participants to be enrolled in training, or expenditures for retraining;
- Actual end-of-project expenditures will be less than the award, or the amount of the award will be insufficient to satisfactorily complete the project;
- The project objectives cannot be accomplished in the approved grant period;
- There is a need to redefine the eligible target group for the project.

Modification requests to reduce the performance measures in the approved grant (i.e., entered employment rate, wage replacement rate, customer satisfaction rating) to be consistent with actual performance will not be approved.

Non-State grantees will also be required to comply with applicable OMB Circular requirements regarding grant modifications, where applicable.

B. Review and Approval of Grant Modification Requests

Requests for grant modifications will be considered consistent with the general purposes of the national reserve account, the selection criteria for national reserve projects, and the purposes of the original grant award. Modifications which request changes in the approved grant budget that comprise 25% or more of the grant award, or which significantly change the project design will be reviewed on the same basis as a new application, except that Assistant Secretary rather than Secretary approval will be required.

Grant modification requests should not be submitted later than 90 days prior to the expiration date of the grant. A request to deobligate or reprogram grant funds should be submitted no later than 120 days prior to the expiration date of the grant.

The Grant Officer will advise the State, or grantee if not the State, in writing of any approval or disapproval of the requested grant modifications within 30 (calendar) days of receipt of a *complete* grant modification request. Such notification will occur within 45 (calendar) days for modifications requiring Assistant Secretary approval.

Appendix A.—Directory of Regional Offices of the Employment and Training Administration

REGIONAL OFFICES OF THE EMPLOYMENT AND TRAINING ADMINISTRATION

Region (States served)	Contact information
Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)—Robert J. Semler, Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., JFK Federal Building, Room E–350, Boston, Massachusetts 02203, (617) 565–3630.
Region II (New York, New Jersey, Puerto Rico, Virgin Islands)—Albert Garizio, Acting Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., 201 Varick Street, Room 755, New York, New York 10014, (212) 337–2139.
Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)—Edwin G. Strong, Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., 3535 Market Street, Room 13300, Philadelphia, Pennsylvania 19104, (215) 596–6336.
Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)—Toussiant L. Hayes, Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., 1371 Peachtree Street, NE; Room 400, Atlanta, Georgia 30367, (404) 347–4411.
Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin) Joseph Juarez, Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., 230 South Dearborn Street, Room 628, Chicago, Illinois 60604, (312) 353–0313.
Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)—Donald A. Balcer, Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., 525 Griffin Street, Room 317, Dallas, Texas 75202, (214) 767–8263.
Region VII (Iowa, Kansas, Missouri, Nebraska)—William H. Hood, Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., 1100 Main Street, Suite 1050, Kansas City, Missouri 64105, (816) 426–3796.
Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)—Peter E. Rell, Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., 1999 Broadway Street, Suite 1780, Denver, Colorado 80202–5716, (303) 391–5740.
Region IX (Arizona, California, Hawaii, Nevada, Pacific Territories)—Armando Quiroz, Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., 71 Stevenson Street, Suite 830, San Francisco, California 94105, (415) 975–4612.
Region X (Alaska, Idaho, Oregon, Washington)—Bill Janes, Regional Administrator.	U.S. Dept. of Labor/Employment & Training Admin., 1111 Third Avenue, Suite 900, Seattle, Washington 98101–3212, (206) 553–7700.

Appendix B.—Directory of State JTPA Liaisons

State JTPA Liaisons

(As of 4/1/96)

ALABAMA

Robert E. Lunsford, Director, Alabama Department of Economic and Community Affairs, P.O. Box 5690, Montgomery, Alabama 36103–5690, Telephone: 334–242–5893, FAX: 334–242–5855,

ALASKA

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ARIZONA

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ARKANSAS

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CALIFORNIA

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COLORADO

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CONNECTICUT

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DELAWARE

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GEORGIA

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HAWAII

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IDAHO

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ILLINOIS

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INDIANA

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IOWA

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LOUISIANA

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MAINE

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MARYLAND

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MICHIGAN

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MISSOURI

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NEVADA

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NEW JERSEY

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NEW MEXICO

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NEW YORK

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NORTH CAROLINA

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NORTH DAKOTA

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RHODE ISLAND

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SOUTH CAROLINA

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SOUTH DAKOTA

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TEXAS

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WEST VIRGINIA

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WISCONSIN

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DISTRICT OF COLUMBIA

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VIRGIN ISLANDS

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GUAM

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REPUBLIC OF THE MARSHALL ISLANDS

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REPUBLIC OF PALAU

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FEDERATED STATES OF MICRONESIA

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Appendix C.—Directory of State Dislocated Worker Units

Dislocated Worker Units

(As of 4/1/96)

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ALASKA

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ARIZONA

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ARKANSAS,

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CALIFORNIA

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COLORADO

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CONNECTICUT

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DELAWARE

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FLORIDA

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GEORGIA

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HAWAII

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IDAHO

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INDIANA

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IOWA

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KANSAS

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KENTUCKY

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LOUISIANA

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MAINE

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MARYLAND

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MASSACHUSETTS

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MICHIGAN

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MISSOURI

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MONTANA

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OKLAHOMA

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PENNSYLVANIA

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RHODE ISLAND

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SOUTH CAROLINA

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SOUTH DAKOTA

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TEXAS

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UTAH

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WEST VIRGINIA

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WISCONSIN

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WYOMING

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PUERTO RICO

Ardin Teron, President, Technological—Occupational Education Council, 431 Ponce de Leon, 16th Floor, Hato Rey, PR 00918, Telephone: (809) 754–5633

VIRGIN ISLANDS

Malcolm McGregor, DWU Coordinator, V.I. Department of Labor, 2131 Hospital Street, Christiansted, St. Croix, V.I. 00820, Telephone: (809) 773–1994

DISTRICT OF COLUMBIA

Shirley Arnett, DWU Chief, 1000 U Street, N.W., Suite 331, Washington, DC 20001, Telephone: (202) 673–4434

Appendix D.—Assurances and Certifications

Assurances and Certifications for JTPA Title III National Reserve Grants

assures that:

1. Use of funds provided through this grant will be in accordance with the Act, applicable regulations, the application and any amendments thereto as approved by the Grant Officer, and shall be consistent with the executed award document signed by the Grant Officer.

2. Services under this grant will be provided only to eligible dislocated workers.

3. Services will not be denied on the basis of residence to eligible dislocated workers.

4. The project design will reflect full consultation with each local labor organization(s) representing 20% or more of the workers affected by the layoff(s) covered by this grant.

5. The project will provide activities and services which are supported with funds reserved by the Secretary pursuant to § 302(a)(2) and § 322(a)(3) of the Job Training Partnership Act.

6. The project will operate in accordance with the General Administrative Provisions of the Act, as described in Title I, Parts C and D, and section 312(e) of the Act; 20 CFR Part 627 of the Regulations; and 20 CFR Part 631, § 631.13, § 631.15, § 631.16, § 631.17, § 631.31, § 631.37, and Subpart G.

7. The project will maintain accurate and timely participant and fiscal records, and will submit complete, accurate and timely reports as specified by the Grant Officer.

8. Except as described in the application and as approved by the Grant Officer, projects administered by State or Title III substate grantees will adhere to all policies and procedures identified in the approved State Title III Plan, and applicable Title III substate plan.

9. Retraining will only occur in occupations with a demand for workers.

10. By signing these Assurances and Certifications, the applicant is assuring compliance with the provisions of each of the following:

a. Assurances—Non-Construction Programs (SF 424B);

b. Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered and Lower Tier Transactions (29 CFR Part 98);

c. Certification Regarding Lobbying (29 CFR Part 93);

d. Certification Regarding Drug-Free Workplace (29 CFR Part 98);

e. Certification of Release of Information;

f. Compliance with Nondiscrimination and Equal Opportunity Requirements of JTPA (29 CFR Part 34).

11. Each contract for on-the-job training will comply with the provisions at § 627.240 of the Regulations.

12. It will conduct at least once annually a comprehensive review and verification of financial management, procurement systems, participant data, and subrecipient monitoring procedures and systems for the project operator.

13. Funds awarded under this grant will not supplant available resources, and will be coordinated with all resources available to provide assistance to the target group.

14. It will provide effective administration and oversight of the funds awarded through this grant; and that it will review expenditures and enrollment data against the planned levels for the project and notify the Grant Officer expeditiously of any potential over- or underexpenditure of grant funds.

15. It will compile and maintain information on project implementation on a monthly basis, and shall provide such information to the Department as requested.

16. It will develop and implement a system for collecting information from participants regarding satisfaction with outcomes and the service process, and for using that information in a continuous improvement process regarding project design and operation.

_____

Signature of Authorized Signatory

_____

Date

_____

Name

Appendix E.—Definitions of Key Terms

Definitions of Key Terms

1. *Family*, for purposes of establishing eligibility for needs-related payments, means two or more persons related by blood, marriage, or decree of court who are living in a single residence, and are included in one of the following categories:

- A husband, wife and dependent children;
- A parent or guardian and dependent children;
- A husband and wife.

2. *Family income* means income as defined by the Department of Health and Human Services in connection with the annual poverty guidelines. Items which should not be included in computing family income are:

- unemployment compensation
- child support and public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, Emergency Assistance money payments, and non-federally funded General Assistance or General Relief payments)
- foster child care payments
- educational financial assistance received under Title IV of the Higher Education Act
- needs-based scholarship assistance
- income earned while on active military duty.

In addition, when a Federal statute specifically provides that income or payments received under such statute shall be excluded in determining eligibility for and the level of benefits received under any other federal statute, such income shall be excluded.

With the exception of the above, and any other exclusions which can be determined appropriate, family income to be used in determining eligibility for needs-related payments shall be all income actually received from all sources by all members of the family for the six-month period prior to application, annualized. When computing family income, income of a spouse and other family members is counted for the portion of the six-month period, prior to application that the person was actually a member of the family.

3. *High performance workplace activities* are activities designed to increase the productivity of workers and the efficiency of work processes. They include, but are not limited to: analyzing and restructuring (''reengineering'') work processes to strip down processes and work procedures to the most essential parts; acquisition and installation of flexible, multi-purpose, usually computer-based equipment; development and installation of self-control performance management procedures; worker participation in designing new work procedures and methods, including evaluation and selection of new technologies and equipment to be used in the workplace; development of worker skills in self-control systems and procedures, decision-making, working in team-based environment; development of worker competence in using new technologies, including an active role by worker representatives in evaluating and selecting training methodologies and materials.

4. *Obsolete skills*, for purposes of establishing eligibility for skills upgrading, means skills or skill levels that would not allow the individual worker to meet current hiring requirements for the occupation in the local labor market, or a labor market to which the individual is willing to relocate. Examples of reasons for ''obsolete skills'' include: skills that are based on individual employer requirements and are not transferrable to other workplaces; skills that are satisfactory in low technology work environments, but are inadequate to meet hiring criteria or for successful job performance in similar occupations within the current local labor market.

5. *Project Operator* is an entity which receives an award from the grantee to operate a full service program for all or part of the target group covered by the grant. Project operators may be defined on the basis of geographical service areas or specific segments of the target population, but shall not be considered to be individual service offices or locations, or providers of specific services (e.g., occupational skills training). In general, project operators would qualify as ''subrecipients'' as defined at 20 CFR 626.5 of the JTPA Regulations.

6. *State,* for the purposes of these grant application guidelines, shall mean the 50 States of the United States, as represented by the State JTPA agency under the Governor/Secretary Agreement and the JTPA Agreement, block grants. ''State'' shall also include the following grant eligible territories and legal jurisdictions: District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, Commonwealth of Northern Marianas, Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau, as represented by the State JTPA agency under the Governor/Secretary and the JTPA Grant Agreements, ''block grant''.

7. *Substate area* means that geographic area in a State designated by the Governor pursuant to his/her authority under section 312 of JTPA.

8. *Substate grantee* means that agency or organization selected to administer programs under agreement among the Governor, the local elected official or officials of the applicable substate area, and the private industry council or councils of such area, as provided in section 312 of JTPA.

9. *Substantial layoff*, for the purpose of eligibility of a layoff for assistance with national reserve account funds, is any reduction-in-force which is not the result of a plant closure and which results in an employment loss at any single site of employment during any 30 period for at least 33% of the employees (who work 20 or more hours per week) or at least 50 employees (who work 20 or more hours per week).

10. *Wage replacement rate for entered employments* is the number which represents the average, for all project participants, of the ratio of the

placement wage to the dislocation wage for each participant.

$$\sum = \frac{\text{placement wage}}{\text{dislocation wage}}$$

[FR Doc. 96–24535 Filed 9–24–96; 8:45 am]
BILLING CODE 4510–30–U

Federal Register

Wednesday
September 25, 1996

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1996.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of September 1, 1996, of 24 rescission proposals and six deferrals contained in eight special messages for FY 1996. These messages were transmitted to Congress on October 19, 1995; and on February 21, February 23, March 5, March 13, April 12, May 14, and June 24, 1996.

Rescissions (Attachments A and C)

As of September 1, 1996, 24 rescission proposals totaling $1.4 billion had been transmitted to the Congress. Congress approved eight of the Administration's rescission proposals in P.L. 104–134. A total of $963.4 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1996 rescission proposals.

Deferrals (Attachments B and D)

As of September 1, 1996, $231.9 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1996.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the Federal Register cited below:

60 FR 55154, Friday, October 27, 1995
61 FR 8691, Tuesday, March 5, 1996
61 FR 10812, Friday, March 15, 1996
61 FR 13350, Tuesday, March 26, 1996
61 FR 17915, Tuesday, April 23, 1996
61 FR 26226, Friday, May 24, 1996
61 FR 34909, Wednesday, July 3, 1996

Franklin D. Raines,

Director.

ATTACHMENT A.—STATUS OF FY 1996 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	1,425.9

ATTACHMENT A.—STATUS OF FY 1996 RESCISSIONS—Continued

[In millions of dollars]

	Budgetary resources
Rejected by the Congress	−462.5
Amounts rescinded by P.L. 104–134	−963.4
Currently before the Congress	−0

ATTACHMENT B.—STATUS OF FY 1996 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	3,689.7
Routine Executive releases through September 1, 1996 (OMB/Agency releases of $3,457.7 million, partially offset by cumulative positive adjustment of $4 thousand.).	
Overturned by the Congress	
Currently before the Congress	231.9

BILLING CODE 3110–01–P

ATTACHMENT C
Status of FY 1996 Rescission Proposals - As of September 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research, Education, and Extension Service								
Buildings and facilities	R96-8		12,000	3-5-96	12,000	5-6-96		
DEPARTMENT OF DEFENSE								
Procurement								
Aircraft procurement, Army	R96-11		140,000	4-12-96	140,000	6-10-96		
Procurement of ammunition, Army	R96-12		47,200	4-12-96	47,200	6-10-96		
Other procurement, Army	R96-13		5,800	4-12-96	5,800	6-10-96		
Procurement of ammunition, Navy and Marine Corps	R96-15		10,000	4-12-96	10,000	6-10-96		
Shipbuilding and conversion, Navy	R96-14		9,200	4-12-96	9,200	6-10-96		
Missile procurement, Air Force	R96-1		310,000	2-21-96			310,000	P.L. 104-134
Other procurement, Air Force	R96-2		265,000	2-21-96			265,000	P.L. 104-134
National guard and reserve equipment	R96-16		13,600	4-12-96	13,600	6-17-96		
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation Army	R96-4		19,500	2-23-96			19,500	P.L. 104-134
	R96-17		9,600	4-12-96	9,600	6-10-96		
Research, development, test, and evaluation Navy	R96-5		35,000	2-23-96			35,000	P.L. 104-134
	R96-18		39,800	4-12-96	39,800	6-10-96		
Research, development, test, and evaluation Air Force	R96-3		245,000	2-21-96			245,000	P.L. 104-134
	R96-6		44,900	2-23-96			44,900	P.L. 104-134
	R96-19		58,000	4-12-96	58,000	6-10-96		

1/ Funds never withheld from obligation.

ATTACHMENT C
Status of FY 1996 Rescission Proposals - As of September 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF DEFENSE - Continued								
Research, development, test, and evaluation								
Defense-wide	R96-7		40,600	2-23-96			40,600	P.L. 104-134
	R96-20		67,200	4-12-96	67,200	6-19-96		
Military Construction								
Military contruction, Army	R96-21		10,000	3-13-96	10,000	6-7-96		
Military contruction, Navy	R96-22		8,000	3-13-96	8,000	6-5-96		
Military contruction, Air Force	R96-23		15,000	3-13-96	15,000	5-23-96		
Military contruction, Defense-wide	R96-24		13,000	3-13-96	13,000	6-7-96		
Military contruction, Air National Guard	R96-25		4,000	3-13-96	4,000	6-7-96		
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	R96-9		3,500	3-5-96	1/		3,400	P.L. 104-134
TOTAL RESCISSIONS		**0**	**1,425,900**		**462,400**		**963,400**	

1/ Funds never withheld from obligation.

[FR Doc. 96-24609 Filed 9-24-96; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT D
Status of FY 1996 Deferrals - As of September 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-96
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D96-1	75,000		10-19-95					
	D96-1A		1,942,076	2-23-96	1,926,347			4	90,733
Foreign military financing program	D96-4	1,385,140		2-23-96					
	D96-4A		26	5-14-96	1,384,202				964
Foreign military financing loan program	D96-5	64,400		2-23-96					64,400
Agency for International Development									
International disaster assistance, Executive	D96-6	124,625		2-23-96	124,625				0
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D96-3	40,486		10-19-95					
	D96-3A		50,545	3-5-96	22,546				68,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D96-2	7,321		10-19-95					
	D96-2A		44	6-24-96					7,365
TOTAL, DEFERRALS		**1,696,972**	**1,992,692**		**3,457,720**			**4**	**231,947**

Federal Register

Wednesday
September 25, 1996

Part V

Environmental Protection Agency

40 CFR Part 258

Re-Establishment of Ground-Water Monitoring Exemption for Small Municipal Solid Waste Landfills Located in Either Dry or Remote Areas; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–5615–8]

RIN 2050–AE24

Solid Waste Disposal Facility Criteria; Re-Establishment of Ground-Water Monitoring Exemption for Small Municipal Solid Waste Landfills Located in Either Dry or Remote Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today, the Environmental Protection Agency (EPA) is revising the criteria for municipal solid waste landfills (MSWLFs)by re-establishing an exemption from ground-water monitoring for owners or operators of certain small landfills. In order to qualify for the exemption, the landfill must accept less than 20 tons of municipal solid waste per day (based on an annual average), have no evidence of ground-water contamination, and be located in either a dry or remote location. This action codifies Sec. 3 of the Land Disposal Program Flexibility Act of 1996 (LDPFA, P.L. 104–119, March 26, 1996), which provides explicit authority for this ground-water monitoring exemption. This action will ease burdens on certain small landfill owners and local governments, without compromising groundwater quality.

EFFECTIVE DATE: This rule is effective on September 25, 1996.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located in Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The Docket Identification Number is F–96–SDRF–FFFFF. The RIC is open from 9:00 am to 4:00 pm, Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general questions on this rule, contact the RCRA Hotline at 800 424–9346, TDD 800 553–7672 (hearing impaired), or 703 412–9810 (Washington, DC metropolitan area).

For technical questions, contact Ms. Dana Arnold of the Office of Solid Waste at 703 308–7279, or at U.S. Environmental Protection Agency (5306W), 401 M Street, S.W., Washington, DC 24060.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

This regulation is promulgated under the authority of sections 1008(a)(3), 2002(a), 4004(a), and 4010(c) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6907(a)(3), 6912(a), 6944(a), and 6949a(c).

II. Regulated Entities

Entities potentially regulated by this action are public or private owners or operators of municipal solid waste landfills (MSWLFs) that accept less than 20 tons of municipal solid waste and are located in dry or remote areas. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Owners or operators of small MSWLFs in dry or remote locations.
Municipal Government.	Owners or operators of small MSWLFs in dry or remote locations.

III. Summary of Today's Action

Today, EPA is revising the 40 CFR Part 258 criteria for MSWLFs by re-establishing an exemption from ground-water monitoring for owners or operators of small landfills that have no known ground-water contamination and that are located in dry or remote areas. This rule codifies Sec. 3 of the Land Disposal Program Flexibility Act of 1996 (P.L. 104–119, March 26, 1996), which amended section 4010(c) of RCRA to exempt certain small MSWLFs from ground-water monitoring requirements. This rule applies to owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions of existing MSWLF units.

IV. Background

A. Prior EPA Ground-Water Monitoring Requirements for Small MSWLFs

On August 30, 1988, EPA proposed municipal solid waste landfill criteria under Subtitle D of RCRA (53 FR 33314), which included minimum federal criteria for location restrictions, facility design and operation, ground-water monitoring, corrective action, financial assurance, and closure and post-closure care requirements.

In the final MSWLF criteria (56 FR 50978, October 9, 1991), EPA included an exemption for owners and operators of certain small MSWLF units located in dry or remote areas (hereafter referred to as ''qualifying small MSWLFs'') from the design and ground-water monitoring requirements. To qualify for the exemption, the landfill must have met the following criteria: accepted less than 20 tons of municipal solid waste per day (based on an annual average), had no evidence of ground-water contamination, and either: (1) served a community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or (2) been located in an area that annually receives 25 inches or less of precipitation and serve a community that has no practicable waste management alternative. In adopting this limited exemption, the Agency believed that it had complied with the statutory requirement to protect human health and the environment, taking into account the practicable capabilities of landfill owners and operators, in this case owners or operators of small MSWLFs.

This exemption was successfully challenged by the Sierra Club and the Natural Resources Defense Council (NRDC). In *Sierra Club* v. *United States Environmental Protection Agency,* 992 F.2d 337 (D.C. Cir. 1993), the U.S. Court of Appeals held that under RCRA section 4010(c), the only factor EPA could consider in determining whether facilities must monitor ground-water was whether such monitoring was ''necessary to detect contamination,'' not whether such monitoring is ''practicable.'' Thus, the Court vacated the exemption for qualifying small MSWLFs as it pertains to ground-water monitoring, and remanded that portion of the final rule to the Agency for

further consideration. The Court did not require EPA to remove the exemption from the design requirements.

On October 1, 1993, EPA rescinded the exemption from ground-water monitoring for qualifying small MSWLFs (58 FR 51536). The Agency also delayed the effective date of the MSWLF criteria for qualifying small MSWLFs for two years (until October 9, 1995), to allow owners and operators of such small MSWLFs adequate time to decide whether to continue to operate in light of the Court's ruling, and to prepare financially for the added costs if they decided to continue to operate.

The U.S. Court of Appeals decision did not preclude EPA from issuing separate ground-water monitoring standards for these landfills, taking into account size, location, and climate, as long as these separate standards ensured that any ground-water contamination would be detected. Therefore, EPA intended to use the additional two-year period to determine if there were practical and affordable alternative monitoring systems or approaches that would be adequate to detect contamination. The Agency determined that there are alternative methods and proposed alternative ground-water monitoring regulations in 1995 (60 FR 40799, August 10, 1995). The Agency subsequently extended the effective date for qualifying small MSWLFs until October 9, 1997 to provide EPA with time to finalize the alternative monitoring requirements (60 FR 52337, October 6, 1995).

B. The Land Disposal Program Flexibility Act of 1996

On March 26, 1996, President Clinton signed into law the Land Disposal Program Flexibility Act of 1996 (LDPFA), P.L. 104–119, which, among other things, amended RCRA section 4010(c) to exempt certain small MSWLFs located in either dry or remote areas from the ground-water monitoring requirements. The LDPFA specifies that the ground-water monitoring requirements do not apply to the owner or operator of a new MSWLF unit, an existing MSWLF unit, or a lateral expansion of a MSWLF unit, that disposes of less than 20 tons of MSW daily, based on an annual average, if there is no evidence of ground-water contamination from the unit or expansion and the unit or expansion serves either a remote community (i.e., one that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional MSW facility) or a dry community (i.e., one that receives 25 inches or less of precipitation annually) that has no practicable waste management alternative.

Today, EPA is implementing this amendment to RCRA section 4010(c) by re-establishing in the Part 258 MSWLF criteria the exemption from the ground-water monitoring requirements for owners or operators of qualifying small MSWLFs. To do so, EPA is revising the introductory text to § 258.1(f)(1), which currently provides that qualifying small MSWLFs are also exempt from the design requirements found in subpart D of Part 258. The revision provides that the qualifying small MSWLFs are exempt from the ground-water monitoring requirements of subpart E. The rest of the exemption (i.e., § 258.1(f)(1) (i) and (ii)) is unchanged. EPA also is revising § 258.1(f)(3) to specify that, if the owner or operator of a qualifying small MSWLF has knowledge of ground-water contamination, then the owner or operator must notify the state Director and comply with the subpart E ground-water monitoring and correction criteria, as well as the subpart D design criteria.

The LDPFA also authorizes States to require MSWLF owners or operators of qualifying small MSWLFs to conduct ground-water monitoring in the specified instances described below. Under the LDPFA, a State may require the owner or operator of a small MSWLF located in a dry or remote area to conduct ground-water monitoring if necessary to protect ground-water resources and ensure compliance with a State ground-water protection plan. If the State finds a release from a solid waste landfill unit, the State must require corrective action as appropriate. The LDPFA also authorizes States to allow owners or operators of qualifying small MSWLFs to use alternatives to ground-water monitoring wells to detect releases.

In addition, the LDPFA authorizes a State to suspend the ground-water monitoring requirements for any MSWLF, if the landfill operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period. The opportunity to demonstrate that there is no migration applies to the operators of all MSWLFs, not just to the operators of qualifying small MSWLFs. The MSWLF rule already contains this ''no migration'' exemption provision. See 40 CFR 258.50(b). As required by the LDPFA, EPA intends to issue guidance to facilitate small community use of this no migration exemption.

V. Good Cause Exemption From Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. § 553(b). Rules are exempt from this requirement if the issuing agency finds good cause that notice and comment are unnecessary. 5 U.S.C. § 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the promulgation of this rule is unnecessary. As discussed in Part IV of this preamble, the LDPFA amended RCRA section 4010(c) to reinstate the small community landfill exemption and to authorize states to require ground-water monitoring and corrective action at small MSWLFs that otherwise would qualify for the exemption. The statutory exemption and other provisions took effect when the President signed the LDPFA on March 26, 1996. Promulgation of today's rule simply implements the Congressional intent of section 3(b) of LDPFA to ''immediately reinstate'' the small community MSWLF exemption that was once codified in 40 CFR § 258.1(f). Because EPA is making no changes to the exemption specifically provided by the LDPFA, it is unnecessary to again provide notice and accept public comment.

For the same reasons, EPA believes there is good cause for making the reinstatement of the small community MSWLF exemption in Part 258 immediately effective. See 5 U.S.C. § 553(d).

VI. Withdrawal of Proposed Rule on Alternative Ground-Water Monitoring

On August 10, 1995 (60 FR 40799), EPA proposed requirements for alternative ground-water monitoring systems or approaches to provide owners and operators of qualifying small MSWLFs with flexibility in meeting the ground-water monitoring requirements of RCRA section 4010(c) and EPA's implementing regulations. As a result of today's re-establishment of the ground-water monitoring exemption into the Part 258 MSWLF criteria, many small landfills will no longer need this flexibility because they will not be subject to the ground-water monitoring requirements. Even if ground-water monitoring is necessary at a qualifying small MSWLF, under the LDPFA, it is the State (or Tribe), rather than EPA, that can allow the landfill operator to use alternative ground-water monitoring techniques. Thus, it is not necessary for EPA to promulgate alternative ground-water

monitoring requirements, and the Agency is withdrawing the proposed alternative ground-water monitoring regulations published on August 10, 1995.

VII. Impact Analysis

Under the LDPFA, the ground-water monitoring exemption for qualified small MSWLFs are in effect regardless of EPA action. In today's final rule, EPA is simply codifying this LDPFA provision in order to enable affected entities to find all relevant requirements in the Part 258 MSWLF criteria in the Code of Federal Regulations. Therefore, any potential regulatory impacts have already been created by Congressional action in enacting the LDPFA. Because the ground-water monitoring exemption for qualified small MSWLFs is deregulatory in nature, however, it provides regulatory relief to small entities.

A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of E.O. 12866 and therefore is not subject to OMB review. In the proposed rule to establish alternative ground-water monitoring requirements, EPA estimated the national annual costs of ground-water monitoring requirements at qualifying small MSWLFs to range from $7.2 million to $26.6 million per year (60 FR 40810, August 10, 1995). Today's action is deregulatory in nature and will provide certain small entities with relief from the costs of ground-water monitoring without adversely impacting human health or the environment.

B. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 605(b), I hereby certify that today's final rule will not have a significant adverse impact on a substantial number of small entities. Today's rule is deregulatory in nature and does not impose any new burdens on small entities. The effect of today's final rule is to provide certain small entities with relief from ground-water monitoring requirements and the costs associated with those requirements. Therefore, this rule does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

EPA's 1991 MSWLF regulations provided that owners or operators that meet the criteria for exemptions from the ground-water monitoring and design criteria must place documentation in the facility operating record demonstrating that they qualified for the exemptions. The information collection requirements for all of Part 258, including this documentation requirement for small, dry or remote landfills, were submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The OMB approval number for compliance with the Part 258 MSWLF criteria recordkeeping and reporting requirements is 2050–0122.

D. Executive Order 12875 and Unfunded Mandates Reform Act

Under Executive Order 12875, Federal agencies are charged with enhancing intergovernmental partnerships by allowing State and local governments the flexibility to design solutions to problems the citizenry is facing. E.O. 12875 calls on Federal agencies to either pay the direct costs of complying with Federal mandates or to consult with representatives of State, local, or Tribal governments prior to formal promulgation of the requirement. The Executive Order also provides for increasing flexibility for State, Tribal, and local governments through waivers.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. UMRA requires agencies to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

EPA has determined that today's final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, Tribal, and local governments in the aggregate, or to the private sector. As previously discussed in this preamble, the exemption from ground-water monitoring for qualifying small MSWLFs reduces a regulatory burden and associated costs that these small entities otherwise would be required to incur.

Prior to passage of the LDPFA, EPA had maintained dialogue with States, Tribes, and local governments regarding ways of ensuring appropriate flexibility while maintaining protection of human health and the environment for small MSWLFs, particularly those in dry or remote locations. The Agency believes that this consultation with States, Tribes, and local governments satisfies the requirement of Executive Order 12875.

E. Considerations of Issues Related to Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency believes that today's rule will not have a disproportionately high or adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. The Agency believes that this rulemaking will enable some minority and/or low-income communities to continue to be served by a local landfill that otherwise would

close because it could not afford the cost of ground-water monitoring. The Agency further believes that this rulemaking will not create adverse impacts on human health and the environment because the ground-water monitoring exemption is only available if there is no evidence of ground-water contamination from the landfill, and States can require both ground-water monitoring and corrective action as necessary to protect ground-water resources.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 258

Environmental protection, Corrective action, Ground-water monitoring, Household hazardous waste, Liner requirements, Liquids in landfills, Reporting and recordkeeping requirements, Security measures, Small quantity generators, State/Trial permit program approval and adequacy, Waste disposal, Water pollution control.

Dated: September 19, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, Part 258, is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949a(c); 33 U.S.C. 1345 (d) and (e).

2. Section 258.1 is amended by revising the introductory text of paragraph (f)(1) and by revising paragraph (f)(3) to read as follows:

§ 258.1 Purpose, scope, and applicability.

* * * * *

(f)(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that dispose of less than twenty (20) tons of municipal solid waste daily, based on an annual average, are exempt from subparts D and E of this part, so long as there is no evidence of ground-water contamination from the MSWLF unit, and the MSWLF unit serves:

* * * * *

(3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of ground-water contamination resulting from the unit that has asserted the exemption in paragraph (f)(1)(i) or (f)(1)(ii) of this section, the owner or operator must notify the state Director of such contamination and, thereafter, comply with subparts D and E of this part.

* * * * *

[FR Doc. 96–24591 Filed 9–24–96; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday
September 25, 1996

Part VI

The President

Presidential Determination No. 96–52 of September 12, 1996—Drawdown of Commodities and Services from the Departments of State, the Treasury, Defense and Justice for Presidential Security Support to the Government of Haiti

Federal Register
Vol. 61, No. 187
Wednesday, September 25, 1996

Presidential Documents

Title 3—

Presidential Determination No. 96–52 of September 12, 1996

Drawdown of Commodities and Services from the Departments of State, the Treasury, Defense and Justice for Presidential Security Support to the Government of Haiti

Memorandum for the Secretary of State, the Secretary of the Treasury, the Secretary of Defense [and] the Attorney General

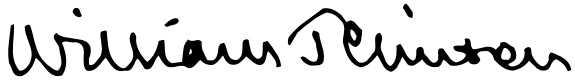
Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a(c)(2) (the ''Act''), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of commodities and services from the inventory and resources of the Departments of State, the Treasury, Defense and Justice of an aggregate value not to exceed $3 million to provide augmentation and training for the Presidential security elements of the Government of Haiti.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the Federal Register.



THE WHITE HOUSE,
Washington, September 12, 1996.

[FR Doc. 96–24794
Filed 9–24–96; 9:53 am]
Billing code 4710–10–M

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 740/P.L. 104–198

To confer jurisdiction of the United States Court of Federal Claims with respect to land claims of Pueblo of Isleta Indian Tribe. (Sept. 18, 1996; 110 Stat. 2418)

H.R. 3396/P.L. 104–199

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H.R. 4018/P.L. 104–200

To make technical corrections in the Federal Oil and Gas Royalty Management Act of 1982. (Sept. 22, 1996; 110 Stat. 2421)

H.R. 3230/P.L. 104–201

National Defense Authorization Act for Fiscal Year 1997 (Sept. 23, 1996; 110 Stat. 2422)

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